<u>TENTATIVE RULINGS: CIVIL LAW & MOTION</u>

Wednesday, August 19, 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.

<u>TO JOIN ZOOM ONLINE:</u>

<u>Department 18:</u>
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

<u>TO JOIN ZOOM BY PHONE</u>:
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. <u>25CV06665, Wyatt v. County of Sonoma</u>

Defendant's demurrer to Plaintiff's First Amended Complaint ("FAC") is **SUSTAINED**. Leave to amend is **DENIED**.

Defendant's counsel shall submit an order consistent with this tentative ruling and in compliance with Rule 3.1312.

<u>Analysis</u>:

Plaintiff alleges that while he was working as an inmate worker in the kitchen facility at the Sonoma County Detention Facility, he was injured when a large pot of boiling water turned over and burned him. Plaintiff raises causes of action against the County of Sonoma for negligence, intentional infliction of emotional distress, and premises liability arising out of the incident. He asserts that the County is liable for Plaintiff's initial injury as well as liable for failure to provide adequate medical treatment for Plaintiff's injury. A cause of action for products liability is also alleged in the FAC, but it was voluntarily dismissed by Plaintiff on February 23, 2026.

The County demurrers to the FAC on the grounds that the County of Sonoma is immune to all of Plaintiff's claims under California Government Code sections 844.6 and 845.6 and Plaintiff's FAC fails to plead sufficient facts to support his claims for intentional infliction of emotional distress and premises liability.

I. The County is Immune from Liability

Plaintiff alleges "This action is brought against Defendant COUNTY pursuant to California Government Code sections 815.2, 815.4, and 820." (FAC, ⁋ 7.) The County argues that it is immune from liability pursuant to Government Code §§ 844.6 and 845.6.

Pursuant to Government Code § 844.6, a public entity is not liable for:

> (1) An injury proximately caused by any prisoner.
>
> (2) An injury to any prisoner.

Government Code § 845.6 provides,

> Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care.

"'[U]nder subdivision (b) of section 815, the immunity provisions of the California Tort Claims Act ... will generally prevail over any liabilities established by statute…In short, sovereign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute.'" (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 671–672.)

Plaintiff does not dispute that he is a prisoner within the meaning of § 844.6; therefore, Gov. Code § 844 and Gov. Code §§ 844.6 and 845.6 apply to him. The County is not liable under Gov. Code § 845.6 for any injury to Plaintiff unless he "pleads facts showing that an employee of the [County] acting within the scope of his employment failed to take action when [he] was "in need of immediate medical care" within the meaning of Government Code section 845.6." (*Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1384–1385.)

Moreover, regarding Plaintiff's premises liability cause of action, Gov. Code § 844.6(c) specifically precludes Governmental liability for such claims by prisoners. It provides, "(c) *Except for an injury to a prisoner*, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part." (Italics added.) With this language "the Legislature intended that public entities be immune from claims of both prisoners and their heirs for the dangerous condition of public property." (*Badiggo v. County of Ventura* (1989) 207 Cal.App.3d 357, 361–362.)

Here, Plaintiff alleges that "Staff members in the kitchen rushed to assist and placed Plaintiff's leg under cold water in a stainless-steel sink." (FAC, ⁋ 23.) Moreover, the County's medical staff applied medical treatment consisting of cold water, gauze wrapping, Tylenol, and ibuprofen. He also alleges that when his injuries visibly worsened and his blood pressure rose, he was transferred to a hospital for specialized burn treatment. Albeit, Plaintiff alleges that the medical treatment provided was inadequate because the County waited 30 hours to transfer him to the hospital. However, Plaintiff does not allege that he was not given any medical treatment during that time frame.

As stated above, the County can only be liable under Gov. Code § 845.6 for failing to summon medical care when a staff member knows it is needed. Plaintiff does not allege that the County failed to summon medical care. His allegations amount to inadequacy of the medical care he received. The Court of Appeal rejected a similar theory in *Watson v. State of California* (1993) 21 Cal.App.4th 836,

> Appellant argues that the statutory duty to "summon" medical care encompasses a duty to provide reasonable medical care. Section 845.6, however, confers a broad general immunity on the public entity. Liability is limited to those situations where the public entity intentionally or unjustifiably fails to furnish immediate medical care.

(*Id.* at 841.)

In opposition, Plaintiff acknowledges the *Watson* authority, but argues that the facts of this case are more similar to those of *Sanders v. County of Yuba* (1967) 247 Cal.App.2d 748. *Sanders* involved a complete failure to summon care for 8 days after receiving notice of the injury. The Court does not agree that *Sanders* is on point, nor that it would require a result different from *Watson*, *supra*.

Plaintiff argues that the present case involves two distinct events, the first being the initial first-aid response and the second being a failure to summon a distinct, escalating level of urgent care in the face of an obviously serious medical condition. The Court does not agree. This was one incident. Plaintiff alleges that medical care was summoned. Plaintiff complains of the speed of the medical care once the condition began worsening. The facts of this case fall precisely under *Watson*.

The County has shown that it is immune from liability for each of the causes of action raised by Plaintiff. It is Plaintiff's burden to show how the FAC can be amended to state a viable claim against the County. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiff identifies the category of additional facts that he could add relating to the premises liability cause of action to rectify the deficiency in the notice allegations. However, the Court has found the County to be immune from liability for such causes of action. Plaintiff does not explain how he could state any cause of action that the County would not be immune to. Accordingly, Plaintiff has failed to meet his burden to show that leave to amend is warranted.

2. <u>26CV00203, Amburn v. County of Sonoma</u>

Defendant's motion for judgment on the pleadings is **DENIED**. Defendant's request for judicial notice is **GRANTED**.

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

Analysis:

On August 29, 2025, Plaintiff filed a complaint in this court in *Amburn v. City of Santa Rosa, et al.* Case No. 25CV05854. In his complaint Plaintiff asserted causes of action against the City of Santa Rosa and other entities arising out of alleged harassment that began in 2022 at Spring Lake Park. Plaintiff alleges a pattern of confrontations over multiple months thereafter allegedly designed to harass Plaintiff.

The State of California requested removal to the United States District Court pursuant to 28 U.S.C. section 1441(a). The U.S. District Court assigned this case, No. 25-cv- 09983. In its Motion to Dismiss the Complaint, the County of Sonoma and Sonoma County Regional Parks, raised as one defense to any state law claims, the failure by Plaintiff Justin Amburn to file a Government Code tort claim pursuant to Government Code §§911.2, 945.4. The County and Regional Parks also moved to dismiss since there was no allegation of compliance with the Government Claims Act (Cal. Gov. Code §810, et seq.).

On December 8, 2025, the County Board of Supervisors received a "Claim Against the County of Sonoma" from Justin Amburn, with attached "Application for Leave to Present Late Claim." This Late Claim references the same incidents as the Complaint in 25CV05854. The Late Claim was denied as untimely.

Mr. Amburn filed the instant Petition on January 21, 2026. The petition in this case seeks relief from the Government Code section 945.4 claims presentation requirement pursuant to Government Code section 946.6. The petition references the same incidents as the Complaint in 25CV05854.

On March 3, 2026 the Hon. Vince Chhabria granted the County's motion to dismiss with leave to amend within 14 days in U.S. District Court Case No. 25-cv-09953-VC. Plaintiff failed to amend his complaint and on March 30, 2026 Judgment with prejudice was entered in favor of Defendant(s) and against Plaintiff.

The County herein seeks judgment on the pleadings of Plaintiff's petition arguing that the doctrines of res judicata and collateral estoppel bar Plaintiff's claim. However, neither doctrine applies here to bar Plaintiff's petition.

"'Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings."'" (*Gabriel v. Wells Fargo Bank, N.A.* (2010) 188 Cal.App.4th 547, 556.) " 'Collateral estoppel precludes the relitigation of an issue only if (1) the issue is identical to an issue decided in a prior proceeding; (2) the issue was actually litigated; (3) the issue was necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding or in privity with a party to the prior proceeding.'" (*Ibid.*)

The County argues that Plaintiff's petition in this matter "clearly references the same allegations and events raised in the United States District Court." This is true. It does reference the same allegations, but it asks for entirely different relief. The petition in this matter asks for relief from the Government Code § 945.4 claims presentation requirement pursuant to Government Code § 946.6.

Plaintiff never sought such relief in the related District Court case. The County has cited no authority that provides that simply referencing the same allegations constitutes grounds for res judicata or collateral estoppel to bar an action. It does not. This petition does not involve the same causes of action or primary rights as the District Court case, so it is not barred by the doctrine of res judicata. Moreover, the issue of whether Plaintiff should be relieved from the requirements of Government Code § 945.4 was not actually litigated in the District Court case. Thus, it is not barred by the doctrine of collateral estoppel.

The County finally argues that there is no longer any controversy since Plaintiff's untimely government code claim was dismissed. This argument is not persuasive because Plaintiff's petition does not ask this Court to decide any claims against the County. It simply seeks relief from the Government Code § 945.4 requirements. This issue is not mooted by the dismissal of the District Court claims. Whether Plaintiff's potential future claims against the County will be barred by the doctrines res judicata or collateral estoppel is not ripe for decision.

3. 25CV01117, Hernandez v. LoanDepot.com, LLC

Defendant Loandepot.com's motion to expunge lis pendens is **GRANTED**. Defendant's request for attorney's fees and costs is **GRANTED** in the amount of $5,010.00.
Defendant's request for judicial notice is **GRANTED**.

Analysis:

On October 28, 2025, Plaintiff recorded a lis pendens against Defendant's property. This Court recently sustained Defendant's demurrer to Plaintiff's Second Amended Complaint without leave to amend, leaving just one cause of action for Violation of Civil Code § 2923.55. Plaintiff alleges that Defendants failed to contact or make diligent efforts to contact him prior to recording a Notice of Default on the property. As this Court explained in its order on Defendant's demurrer to the Second Amended Complaint, equitable relief is not available to Plaintiff because he has failed to allege tender or excuse from tender. Only economic damages are available.

I. The Lis Pendens is Void and Invalid as a Matter of Law

CCP § 405.22 requires the claimant to serve a copy of the notice of pendency of action to the adverse party by registered or certified mail with return receipt requested prior to recordation. There is nothing in the record indicating that this happened. In fact, the uncontradicted declaration and request for judicial notice in support of this motion indicate that this did not happen.

CCP § 405.23 provides that "[a]ny notice of pendency of action shall be void and invalid as to any adverse party or owner of record unless the requirements of Section 405.22 are met for that party or owner and a proof of service in the form and content specified in Section 1013a has been recorded with the notice of pendency of action."

A proof of service was not recorded with the lis pendens. Accordingly, it is clear from the record that the notice of pendency of action is void and invalid due to Plaintiff's failure to comply with CCP § 405.22. Plaintiff argues in opposition that Defendant was aware of the lis pendens. The other parties' knowledge of the lis pendens is not sufficient to satisfy the statutory service requirements.

II. This Matter Does Not Involve a Real Property Claim

Only a "real property claim" can support a lis pendens. (CCP § 405.1.) A lis pendens "claimant" is "a party to an action who asserts a real property claim and records a notice of the pendency of the action." (CCP § 405.1.) A "real property claim" is "a cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading...." (CCP §405.4.)

The allegations of the complaint determine if a "real property claim" is involved. (*Urez Corp. v. Sup.Ct.* (1987) 190 Cal.App.3d 1141, 1149.) According to CCP §§405.31-405.32, the lis pendens must be expunged without a bond if the claim does not affect title to real property or if the recording party cannot establish the probable validity of the real property claim by the preponderance of the evidence.

Notwithstanding that the lis pendens is void and invalid, this matter does not involve a real property claim. A real property claim is one that affects title to, or the right to possession of, specific real property or the use of an easement identified in the pleading. (CCP §405.4.) Plaintiff's sole cause of action against Defendant does not do so. As explained by this Court, Plaintiff's relief is limited to economic damages since Plaintiff has failed to allege tender or offer of tender. Leave to amend the Second Amended Complaint has been denied. So, it is clear that Plaintiff's claim will not affect title, possession, or an easement. Since Plaintiff does not assert a real property claim, the Court need not reach the analysis of whether Plaintiff can show the probable validity of his claim. (CCP § 405.32.)

III. Defendant is Entitled to Attorney's Fees and Costs

CCP § 405.68 provides that the Court shall direct that the prevailing party on a motion to expunge lis pendens be awarded the reasonable attorney's fees and costs of making or opposing the motion, unless the Court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Plaintiff has not shown circumstances that would warrant denial of attorney's fees and costs to Defendant. Defendant requests $5,010.00 in attorney's fees and costs. The Court finds the request to be reasonable and it is granted.

4. 25CV08791, County of Sonoma v. Novak, SR

Plaintiff's unopposed motion for leave to file an amended complaint is **GRANTED**. Plaintiff shall file the proposed first amended complaint within 10 days of this order.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.) "'Generally, leave to amend must be liberally granted…provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation.'" (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) As long as the motion is timely and will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

Plaintiff's motion is timely and the Court finds no prejudice to Defendants. The motion is therefore granted.

5-6. 26CV00850, Graton Church of Christ v. Pacific Christian Academy

1. Defendant Pacific Christian Academy's Demurrer to Plaintiff's Complaint

Defendant Pacific Christian Academy's demurrer to Plaintiff's complaint is **SUSTAINED** in part and **OVERRULED** in part. The demurrer is **SUSTAINED** as to the Fifth Cause of Action for Appointment of Receiver only. Leave to amend the cause of action is denied; however, Plaintiff may amend the complaint to assert appointment of a receiver as a remedy. The demurrer to all other causes of action is **OVERRULED**. Defendant's request for judicial notice is **GRANTED**.

As an initial matter, Defendant's memorandum in support of the demurrer is 26 pages long, not counting the cover page or table of contents. According to Cal. Rules of Court, Rule 3.1113(d), opening memoranda may not exceed 15 pages. Defendant's brief exceeds this limit by 11 pages. Defendant did not seek leave of Court to file a tremendously oversized brief. Counsel for Defendant, Daryl J. Reese, who signed this motion, has a bar number indicating that he has been practicing law for quite some time. Accordingly, Mr. Reese should be well aware of this Rule. In fairness to Plaintiff, and in preservation of finite judicial resources, the Court has not considered the last 11 pages of Defendant's brief.

The Court also notes that on June 29, 2026, Plaintiff filed a motion for relief under CCP § 473(b) relating to Plaintiff's late filed opposition. The Court has already granted the relief requested therein; therefore, the motion is moot. It is ordered **DROPPED FROM CALENDAR**.

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

Analysis:

Plaintiff, Graton Church of Christ, Incorporated, alleges that it is a religious corporation that is the intended beneficiary of the assets of the Defendant, Pacific Christian Academy ("PCA") upon its dissolution and is also the holder of rights to the water well located on property owned by the Defendant. As alleged, PCA holds title to two parcels of real property which have historically been used in the operation of a Christian School.

Plaintiff alleges that PCA was formed in 1919 as a nonprofit public benefit corporation under the laws of California. In 1954, PCA amended its Articles of Incorporation ("AOI") to irrevocably dedicate all property, now possessed, or hereafter acquired, to religious, charitable, and scientific purposes. The 1954 amendment included a reversionary provision stating that upon cessation of corporate existence, liquidation, dissolution, or abandonment of any or all of the property dedicated, such property shall not go to or inure to the benefit of any private person but shall vest to the benefit of the Church of Christ of Graton, California.

In August 1963, PCA again amended its AOI, reaffirming the irrevocable dedication of all property to religious, charitable, and scientific purposes. As alleged, the 1963 amendment included "Article Ninth," which affirmed the dedication to the Plaintiff, Graton Church, that upon the cessation of corporate existence, or upon liquidation, dissolution, or abandonment of any or all of the property dedicated, such property, real and personal, shall not go to or inure to the benefit of any private person, but shall vest to the benefit of the Plaintiff herein, the Church of Christ, Graton, California, if at such a time the Church is operated for religious, hospital, scientific, or charitable purposes.

Plaintiff alleges a historic and ongoing interconnection between Plaintiff and Defendant over a period of over a century that demonstrates that the two entities operated with a singular charitable purpose. This includes a shared charitable mission, volunteer labor and financial support provided by Plaintiff, as well as shared use of facilities and resources.

Plaintiff alleges that in November of 2025, Defendant Cindy Lanier notified the board of Plaintiff that PCA had been operating in the red and requested funding from Plaintiff. On or about November 10, 2025, the members of the PCA board voted to wind up the affairs and to dissolve PCA and to close the preschool that was being operated on the alleged Charitable Trust Property.

Plaintiff alleges that the election to dissolve under the then current governing documents triggered the obligation to distribute according to these documents, i.e. specifically designating the Plaintiff, Graton Church as the recipient to be distributed the assets of the Defendant, PCA on dissolution.

Since December of 2025, Plaintiff alleges that it has been trying to assist with the winding up and transfer of the Charitable Trust Property to Plaintiff, and has also offered financial assistance, but Defendant has refused. Plaintiff alleges that Defendant simply provided unlawfully modified articles and bylaws to claim that it no longer is obligated to distribute any assets to Plaintiff. The 2026 amended AOI purportedly allows Defendant to sell the Charitable Trust Property. Plaintiff alleges that the amendment is unlawful and an improper attempt to alter the terms of the charitable trust which irrevocably exists for the benefit of the Plaintiff at the time of PCA's dissolution. Defendant has listed the Charitable Trust Property for sale for a total of $1,000,000. Plaintiff alleges that Defendant also threatened to terminate Plaintiff's access to the water well on the property that Plaintiff developed, maintained, and used for over 70 years.

Plaintiff alleges causes of action for Breach of Charitable Trust, Prescriptive Easement for the Water Well, Declaratory Relief, Accounting, Appointment of Receiver, and Quiet Title. Defendant PCA demurrers to each cause of action of the Complaint as lacking sufficient facts to state a cause of action. Defendant also demurrers to the Second Cause of Action as being uncertain.

I. First Cause of Action—Breach of Charitable Trust *a. Plaintiff Has Standing to Assert Breach of Charitable Trust*

Defendant first argues that Plaintiff does not have standing to raise a claim of breach of charitable trust under Corporations Code § 5142, which provides,

> (a) Notwithstanding Section 5141, any of the following may bring an action to enjoin, correct, obtain damages for or to otherwise remedy a breach of a charitable trust:
>
> > (1) The corporation, or a member in the name of the corporation pursuant to Section 5710.
> > (2) An officer of the corporation.
> > (3) A director of the corporation.
> > (4) A person with a reversionary, contractual, or property interest in the assets subject to such charitable trust.
> > (5) The Attorney General, or any person granted relator status by the Attorney General.

"Article Eighth" of the PCA 1963 AOI states, "All of the property of the Pacific Christian Academy, now possessed or hereafter acquired, is irrevocably dedicated to religious, charitable, and scientific purposes and the Pacific Christian Academy is organized and operated solely for religious, charitable, and scientific purposes."

"Article Ninth" of the 1963 AOI provided that "Upon cessation of corporate existence, or upon liquidation, dissolution, or abandonment of any or all of the property above dedicated, such property shall not go to or inure to the benefit of any private person, but shall vest to the benefit of the Church of Christ, Graton, California if at such time the Church is operated for religious, hospital, scientific, or charitable purposes; and if at such time the Church is not so operated, the property shall only vest in a fund, foundation or corporation so operated."

Defendant argues that the designation of the property to Plaintiff created merely a contingent expectancy that could be revoked at will and not create a reversionary, contractual, or property interest. Plaintiff argues that the language grants Plaintiff a reversionary interest, a future property interest that vests upon the occurrence of a specified event (dissolution, liquidation, or abandonment).

Plaintiff cites *Queen of Angels Hosp. v. Younger* (1977) 66 Cal.App.3d 359 to show that California law recognizes that dissolution provisions in nonprofit articles create enforceable property interests. While the Court finds the case to not be entirely on point here, the Court does agree with Plaintiff that Plaintiff has sufficiently alleged a reversionary interest in the property such that Plaintiff has standing to assert the breach of charitable trust cause of action. Defendant's argument that the language of "Article Ninth" simply created a contingent expectancy is not persuasive.

b. Plaintiff Has Stated a Claim for Breach of Charitable Trust

According to Probate Code § 15200, "a trust may be created by any of the following methods:"

> (a) A declaration by the owner of property that the owner holds the property as trustee.
> (b) A transfer of property by the owner during the owner's lifetime to another person as

trustee.
(c) A transfer of property by the owner, by will or by other instrument taking effect upon the death of the owner, to another person as trustee.
(d) An exercise of a power of appointment to another person as trustee.
(e) An enforceable promise to create a trust.

Plaintiff argues, and the Court agrees, that PCA's 1954 and 1963 AOI's manifested the clear intent to create a charitable trust. Article Seventh (1954) and Article Eighth (1963) declared that "[a]ll the property of the Pacific Christian Academy, now possessed or hereafter acquired, is irrevocably dedicated to religious, charitable, and scientific purposes." The Court agrees that this language is sufficient manifestation of an intent to create an irrevocable trust.

The Court also agrees with Plaintiff that "Article Ninth" clearly indicates that Plaintiff is a beneficiary of the charitable trust. Beneficiaries of charitable trusts may sue to redress a breach of trust. (Prob. Code, § 16420(a)(3).)

Irrevocable trusts may only be modified "if all beneficiaries" consent and petition the Court for modification or termination. (Prob. Code, § 15403.) Corporations Code § 5810 authorizes amendments "so long as its articles as amended contain only such provisions as it would be lawful to insert in original articles filed at the time of the filing of the amendment." Accordingly, it is unlawful to amend the AOI to omit a beneficiary of an irrevocable trust unless that beneficiary consented and a petition was made to the Court for approval.

Plaintiff has alleged that the 2026 amendment to PCA's AOI which omitted Plaintiff as a beneficiary was unlawful because the charitable trust was irrevocable. Plaintiff has sufficiently stated such allegation. Defendant's arguments regarding the effect of the 2026 amendment on Plaintiff's ability to state this cause of action are unavailing.

Finally, Defendant argues that there was a condition precedent "to establishing the trust," being PCA's dissolution. This argument is likewise unpersuasive. While a condition precedent does exist in the language of "Article Ninth" it is not a condition precedent to the establishment of the trust. The trust was established. The condition precedent applies to whether Plaintiff is entitled to possession of the property. In so far as Defendant argues that Plaintiff's claim is unripe because PCA has not officially been dissolved yet, this argument is not persuasive. Plaintiff alleges that the PCA board approved dissolution in November of 2025. Plaintiff also alleges that PCA has taken steps to sell the properties. Plaintiff has sufficiently stated a cause of action for breach of charitable trust.

II. Second Through Sixth Causes of Action

The argument supporting Defendant's demurrer to the Second through Sixth Causes of Action is contained on pages 16-26 of Defendant's brief. The Court has not read these pages as they exceed the 15 page limit of Rule 3.1113(d). By failing to include argument regarding these causes of action in the first 15 pages of the brief, Defendant has failed to support the demurrer to these causes of action.

Nonetheless, the Court has reviewed the causes of action and finds them to be sufficiently pleaded, with the exception of the Fifth Cause of Action for Appointment of a Receiver. "There is no separate cause of action for the appointment of a receiver…" (*Starbird v. Lane* (1962) 203 Cal.App.2d 247, 261.) It is merely a remedy. The demurrer to this cause of action is sustained.

2. Defendant Pacific Christian Academy's Motion to Expunge Lis Pendens

Defendant Pacific Christian Academy's motion to expunge lis pendens is **DENIED**. Plaintiff's request for attorney's fees and costs is **DENIED**. Plaintiff's evidentiary objections are **SUSTAINED**.

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

Analysis:

This matter came on for hearing on August 5, 2026, during which time the Court heard oral argument from both parties. Plaintiff argued for the first time at the hearing that the verified complaint constituted sufficient evidence to meet Plaintiff's burden on this motion. The Court ordered further briefing from the parties on this point, which the Court has now considered. This argument is addressed below.

Plaintiff, Graton Church of Christ, Incorporated, alleges that it is a religious corporation that is the intended beneficiary of the assets of the Defendant, Pacific Christian Academy ("PCA") upon its dissolution and is also the holder of rights to the water well located on property owned by the Defendant. As alleged, PCA holds title to two parcels of real property which have historically been used in the operation of a Christian School.

Plaintiff alleges that PCA was formed in 1919 as a nonprofit public benefit corporation under the laws of California. In 1954, PCA amended its Articles of Incorporation ("AOI") to irrevocably dedicate all property, now possessed, or hereafter acquired, to religious, charitable, and scientific purposes. The 1954 amendment included a reversionary provision stating that upon cessation of corporate existence, liquidation, dissolution, or abandonment of any or all of the property dedicated, such property shall not go to or inure to the benefit of any private person but shall vest to the benefit of the Church of Christ of Graton, California.

In August 1963, PCA again amended its AOI, reaffirming the irrevocable dedication of all property to religious, charitable, and scientific purposes. As alleged, the 1963 amendment included "Article Ninth," which affirmed the dedication to the Plaintiff, Graton Church, that upon the cessation of corporate existence, or upon liquidation, dissolution, or abandonment of any or all of the property dedicated, such property, real and personal, shall not go to or inure to the benefit of any private person, but shall vest to the benefit of the Plaintiff herein, the Church of Christ, Graton, California, if at such a time the Church is operated for religious, hospital, scientific, or charitable purposes.

Plaintiff alleges a historic and ongoing interconnection between Plaintiff and Defendant over a period of over a century that demonstrates that the two entities operated with a singular charitable purpose. This includes a shared charitable mission, volunteer labor and financial support provided by Plaintiff, as well as shared use of facilities and resources.

Plaintiff alleges that in November of 2025, Defendant Cindy Lanier notified the board of Plaintiff that PCA had been operating in the red and requested funding from Plaintiff. On or about November 10, 2025, the members of the PCA board voted to wind up the affairs and to dissolve PCA and to close the preschool that was being operated on the alleged Charitable Trust Property.

Plaintiff alleges that the election to dissolve under the then current governing documents triggered the obligation to distribute according to these documents, i.e. specifically designating the Plaintiff, Graton Church as the recipient to be distributed the assets of the Defendant, PCA on dissolution.

Since December of 2025, Plaintiff alleges that it has been trying to assist with the winding up and transfer of the Charitable Trust Property to Plaintiff, and has also offered financial assistance, but Defendant has refused. Plaintiff alleges that Defendant simply provided unlawfully modified articles and bylaws to claim that it no longer is obligated to distribute any assets to Plaintiff. The 2026 amended AOI purportedly allows Defendant to sell the Charitable Trust Property. Plaintiff alleges that the amendment is unlawful and an improper attempt to alter the terms of the charitable trust which irrevocably exists for the benefit of the Plaintiff at the time of PCA's dissolution. Defendant has listed the Charitable Trust Property for sale for a total of $1,000,000. Plaintiff alleges that Defendant also threatened to terminate Plaintiff's access to the water well on the property that Plaintiff developed, maintained, and used for over 70 years.

Plaintiff alleges causes of action for Breach of Charitable Trust, Prescriptive Easement for the Water Well, Declaratory Relief, Accounting, Appointment of Receiver, and Quiet Title. On February 20, 2026, the day after filing the complaint in this matter, Plaintiff recorded a Notice of Pendency of Action (lis pendens) relating to PCA's real properties at 8877 and 9001 Donald Street, Graton, CA.

Defendant herein seeks to expunge the lis pendens arguing that Plaintiff has failed to state a real property claim against Defendant. Plaintiff's Complaint seeks: (1) to quiet title to the two parcels located at 8877 and 9001 Donald Street, Graton, California (the "Charitable Trust Property"), based on PCA's 1954 and 1963 Articles of Incorporation irrevocably dedicating those assets to GCC upon dissolution; and (2) to establish a prescriptive easement for ongoing access, maintenance, and use rights in the well and related water distribution facilities on the 9001 Donald Street parcel (the "Well Property").

I. <u>Plaintiff Has Meet its Burden on this Motion only as to the Breach of Charitable Trust Claim</u>

Only a "real property claim" can support a lis pendens. (CCP § 405.1.) A lis pendens "claimant" is "a party to an action who asserts a real property claim and records a notice of the pendency of the action." (CCP § 405.1.) A "real property claim" is "a cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading...." (CCP §405.4.)

The allegations of the complaint determine if a "real property claim" is involved. (*Urez Corp. v. Sup.Ct.* (1987) 190 Cal.App.3d 1141, 1149.) According to CCP §§405.31-405.32, the lis pendens must be expunged without a bond if the claim does not affect title to real property or if the recording party cannot establish the probable validity of the real property claim by the preponderance of the evidence.

The burden of proof is on the lis pendens claimant, the party opposing the motion. (CCP § 405.32.) The claimant must show with evidence that it is more likely than not that the claimant will prevail and obtain a judgment. (CCP § 405.3.) If the court determines that the lis pendens is improper, expungement is mandatory. (CCP §§405.30-405.32.)

Here, as demonstrated in the Court's concurrent ruling on Defendant's demurrer, the Court does not agree with Defendant that Plaintiff has failed to state a real property claim in the Complaint. The Court finds the allegations of Plaintiff's complaint relating to the real property claims to be sufficient. However, Plaintiff has the burden on this motion to establish, with evidence, that it is more likely than not that Plaintiff will obtain a judgment against the defendant on the real property claims.

The Court previously issued a tentative ruling granting this motion on the grounds that Plaintiff had not submitted any evidence whatsoever that would support its real property claims. At the hearing, Plaintiff argued for the first time that Plaintiff's verified complaint constituted sufficient evidence to meet its burden on this motion, citing *Coppinger v. Superior Court* (1982) 134 Cal.App.3d 883. The Court ordered further briefing, which it has now considered.

The *Coppinger* Court concluded that "a plaintiff may rely on a verified complaint to oppose a motion to expunge a lis pendens." (*Id*. at 889.) The *Coppinger* Court explained that, in that case, this meant that the plaintiff did produce "some evidence" to discharge her burden of proof, "but the sufficiency of that evidence must be determined by examining the complaint in light of the specific facts which plaintiff was required to establish." (*Ibid*.)

Coppinger predates the 1992 revision of the lis pendens statutes and applied the former good-faith/proper-purpose framework. The current version of the statute imposes a higher requirement—probable validity proven by a preponderance of the evidence. (*Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1011-1012.) Notwithstanding this, it is still true that a verified complaint does constitute *some* evidence.

Analyzing the verified complaint for its evidentiary value, the Court finds that Plaintiff has met its burden on this motion only as to the breach of charitable trust allegations, but not as to the prescriptive easement allegations. Considering the language of the PCA AOI and considering the facts of the verified complaint, Plaintiff has sufficiently shown the probable validity of the breach of charitable trust claim by a preponderance of the evidence. While the Court does not agree with Plaintiff that the contents of the verified complaint or the evidence submitted in support of this motion show the probable validity of the prescriptive easement claims, Plaintiff's showing regarding the breach of charitable trust claim is sufficient to support denial of this motion.

II. Plaintiff's Request for Attorney's Fees and Costs is Denied

CCP § 405.38 provides that the Court shall direct that the prevailing party on a motion to expunge lis pendens be awarded the reasonable attorney's fees and costs of making or opposing the motion, unless the Court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.
Plaintiff seeks $10,900 in fees and costs for opposing this motion. However, the Court finds that Defendant acted with substantial justification in making it the motion. The Court also finds other circumstances that make the imposition of attorney's fees and costs against Defendant unjust.

Plaintiff has only shown the probable validity of its breach of charitable trust claim, not of all of the claims asserted in the complaint. Even then, Plaintiff only did so after given further opportunity by the Court to submit evidence and further briefing on arguments raised for the first time at oral argument. Plaintiff's original briefing was insufficient such that the Court tentatively ruled against Plaintiff. Requiring Defendant to pay for Plaintiff's fees and costs on this motion would be unjust.

7. <u>26CV02195, Mungai v. Stuart</u>

Defendants' demurrer to Plaintiff's Complaint is **SUSTAINED in part and OVERRULED in part**. The demurrer is **SUSTAINED** as to the Second Cause of Action only as it is alleged against Defendant William Stuart. The demurrer is **OVERRULED** as to all causes of action alleged against Defendant Milestone Financial, LLC. Leave to amend is **GRANTED**.

Defendants' counsel shall submit an order consistent with this tentative ruling and in compliance with Rule 3.1312.

<u>Request for Judicial Notice:</u>

Defendants request judicial notice of several documents as outlined in the Request for Judicial Notice. The Court will grant the request but notes that the Court is taking notice only of the existence of these documents and the date upon which they were filed, not of the truth of any of the matters contained within them. "'Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.'…While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein." (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

<u>Analysis</u>:

Plaintiff filed a complaint on March 27, 2026 against Milestone Financial, LLC, William Stuart, and PacShores Mortgage, Inc. Defendants Milestone Financial, LLC ("Milestone") and William Stuart herein demur to the complaint.

Plaintiff alleges in the complaint that she is a homeowner in Santa Rosa who sought a modest loan secured by the equity in her home when she was experiencing financial hardship as a result of caring for her ill mother. She alleges that Defendant PacShores Mortgage, Inc., acting as Plaintiff's mortgage broker, arranged a purported "business purpose" loan through Defendant Milestone. As alleged, the Defendants fraudulently structured the loan as a "business purpose" loan in order to evade consumer lender protections. Rather, Defendants knew Plaintiff was unemployed and had no operating business and that the loan would be used for personal, family, or household expenses.

Plaintiff's Second through Fifth Causes of Action are asserted against Defendant Milestone. They are for Violation of the Rosenthal Fair Debt Collection Practices Act; Declaratory Relief—Voidable for Constructive Fraud; Declaratory Relief—Illegality/Public Policy; and Declaratory Relief—Invalid Default Interest Clause, respectively. Plaintiff asserts only the Second Cause of Action against Defendant William Stuart.

I. Second Cause of Action - Violation of the Rosenthal Fair Debt Collection Practices Act

Defendants argue that Plaintiff has failed to state this cause of action because the Rosenthal Fair Debt Collection Practices Act ("the Act") applies only to consumer debts while Plaintiff's debt was a business loan. This argument ignores the entire crux of Plaintiff's complaint. She alleges that her loan should have been structured as, and was in nature, a consumer loan, but was intentionally and fraudulently structured as a business loan in order to evade consumer protections. Defendants have not cited any authority that would bar such a claim.

The Court finds *Slenk v. Transworld Systems, Inc., infra,* to be highly persuasive. The *Slenk* Court explained,

> We have found it necessary when classifying a loan to " 'examine the transaction as a whole,' paying particular attention to 'the purpose for which the credit was extended in order to determine whether [the] transaction was primarily consumer or commercial in nature.' " [Citation.] In making this determination, we have elevated substance over form, holding that "[n]either the lender's motives nor the fashion in which the loan is memorialized are dispositive of this inquiry." [Citation.] We must therefore "look to the substance of the transaction and the borrower's purpose in obtaining the loan, rather than the form alone." [Citation.]

(*Slenk v. Transworld Systems, Inc.* (9th Cir. 2001) 236 F.3d 1072, 1075.) As explained in *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1583, the "factors to consider in determining whether a loan is for personal, family, or household purposes or for business or commercial purposes" are "the relationship to the borrower's primary occupation, the degree to which the borrower personally manages the funds, the ratio of the funds to the borrower's income, and the size of the transaction."

Plaintiff alleges that the loan proceeds were used primarily for personal, family, or household services. Accordingly, Plaintiff has alleged that the debt was a consumer debt as defined by the Act. (Civ. Code § 1788.2.)

To the extent that Defendants have made allegations of fraud against Plaintiff in their briefs, the Court has disregarded them. The Court's review on demurrer is based solely on the face of the complaint and on that which is judicially noticeable. Such allegations are neither.

Plaintiff has sufficiently alleged a violation of the Act by Defendant Milestone. However, Plaintiff also asserts this cause of action against William Stuart individually. The only facts stated in relation to Defendant Stuart individually are that he is the officer responsible for directing Milestone's conduct. Such is insufficient to establish individual liability of Defendant Stuart. The demurrer to this cause of action is sustained only as it is alleged against Defendant Stuart but overruled as it is alleged against Defendant Milestone.

II. Third Through Fifth Causes of Action – Declaratory Relief

Defendants argue that Plaintiff's declaratory relief causes of action are barred by Plaintiff's own fraud and by judicial estoppel. Defendants rely on the contents of the documents of which they seek judicial notice to make allegations of fraud committed by Plaintiff. As explained above, the Court does not take notice of the truth of any of the contents of those documents. Defendants' entire argument supporting the demurrer to the Third through Fifth causes of action is based upon the contents of those documents. Defendants' allegations of fraud by Plaintiff in Defendants' briefs have been disregarded.

Defendants' arguments regarding judicial estoppel would require this Court to make factual determinations based on the contents of the judicially noticed documents. Such is entirely improper on demurrer. "'[C]ases concerning judicial estoppel have generally been decided after a fact-finding or evidence-reviewing proceeding of some sort' because the doctrine often 'requires consideration of the evidence.'" (*Miyahara v. Wells Fargo Bank, N.A.* (2024) 99 Cal.App.5th 687, 702.) In *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, the Court found that the trial court erred in deciding the issue of judicial estopped on a motion for judgment on the pleadings where "The motion relied 'entirely on the allegations of Plaintiff's Complaint and documents from Plaintiff's bankruptcy proceeding.'" (*Id*. at 1018.) "Northrop's effort to invoke judicial estoppel to bar plaintiff's claims raised factual issues which could not be answered by exclusive reference to plaintiff's complaint and plaintiff's bankruptcy filings, and hence could not be determined on a motion for judgment on the pleadings." (*Id*. at 1018-1019.) This is precisely what Defendants are asking the Court to do here. Clearly, it would be error to do so.

Defendants have not pointed to any other deficiencies in Plaintiff's allegations supporting her declaratory relief causes of action. The Court finds none. The demurrer to the Third through Fifth causes of action is overruled.

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