TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, September 23, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-273623, Alexander Valley Gourmet, LLC v. Industry West Commerce Center, LLC

Plaintiff and Cross-Defendant's motion for forensic examination is **DENIED**.

Defendant's request for sanctions against the moving parties is **DENIED**.

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

The Court notes that the parties stipulated to the appointment of a discovery referee to hear all discovery related matters, but explicitly agreed that matters addressed by the Court's April 30, 2026 spoliation order shall remain with the Court. This motion directly relates to that order; therefore, it shall be heard by the Court.

Analysis:

On April 30, 2026, this Court issued an order granting Plaintiffs' motion for sanctions for spoliation of evidence against Defendant Industry West Commerce Center, LLC ("IWCC") relating to the deletion of text messages by its principal, Vincent Rizzo, from his iPhone. The Court will not herein reiterate the facts or circumstances underlying that order, but will incorporate its April 30, 2026 order into this one. At the hearing on the motion, the Court agreed with Plaintiffs that a forensic examination of the phone was appropriate, but did not issue an order requiring one. The Court encouraged the parties to meet and confer regarding a forensic examination.

After not being able to reach an agreement, the moving parties filed this motion on June 3, 2026. They bring the motion pursuant to "California Code of Civil Procedure §§ 2023.010, 2031.320 and 2023.030 and the Court's inherent authority…" It is therefore not a motion to compel further responses to a discovery demand.

I. Movants Have Failed to State a Legal Ground for the Relief Requested

The moving parties seek an order compelling Defendant to submit the iPhones, iCloud accounts and other electronic devices and accounts relating or belonging to its principal, Vincent Rizzo, for forensic examination pursuant to the movants' proposed protocol. Defendant opposes the motion on the grounds that it is procedurally deficient and premature since Plaintiff did not serve an inspection demand prior to bringing the motion and did not file a separate statement in support of the motion. The moving parties respond that this is not a motion to compel further responses to an inspection demand, but rather a motion requesting the Court order that Defendant submit to a forensic examination under "California Code of Civil Procedure §§ 2023.010, 2031.320 and 2023.030 and the Court's inherent authority…" (See Plaintiffs' Notice of Motion.) The movants ultimately served an inspection demand on June 29th. However, since it was served after this motion was made and since this motion explicitly does not seek to compel a further response to that inspection demand, the Court will not address it.

None of the code sections cited in the movants' notice of motion refer or relate to the Court's purported inherent authority to compel a party into complying with a forensic examination that has not been formally demanded under the required procedures of the Civil Discovery Act. CCP § 2023.010 outlines conduct that is subject to sanctions. Refusing to submit to an informal request for a forensic examination sent via email is not conduct subject to sanctions. Failing to come to an agreement regarding the parameters of a forensic examination when one has not been ordered or formally demanded is not conduct subject to sanctions. In so far as the movants complain of Defendant's spoliation of evidence, Defendant has already been sanctioned for that conduct. Likewise, CCP § 2023.030 describes the Court's authority to sanction a party for a misuse of the discovery process. It does not authorize the Court to order a party to submit to a form of discovery not properly demanded.

CCP § 2031.320 relates to parties responding to inspection demands, "under Sections 2031.210, 2031.220, 2031.230, 2031.240." The movants had not served an inspection demand prior to bringing this motion. Therefore, CCP § 2031.320 does not apply.

Finally, movants bring this motion pursuant to "the Court's inherent authority," citing *City of Los Angeles v. PricewaterhouseCoopers, LLP* (2024) 17 Cal.5th 46, 63 in their notice of motion. That case refers to the trial court's inherent authority to "impose discovery sanctions not inconsistent with the current version of the Act." It does not provide that the Court has the inherent authority to require a party to submit to discovery that has not been demanded under the Act. Moreover, Defendant has already been sanctioned for the spoliation.

In their briefing, movants cite *Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121. That case discusses sanctions for spoliation of evidence. Again, Defendant has already been sanctioned for the spoliation. The *Victor Valley* case does not discuss the Court's authority to order a party to comply with discovery that has not been formally demanded.

Movants cite *Dodge, Warren & Peters Ins. Servs., Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1417-21. The question before the *Dodge* Court was whether it was appropriate for the trial court to issue an injunction to prevent the potential destruction of evidence pending discovery. (*Id*. at 1418.) In affirming the injunction, the reviewing Court referred to the trial court's "inherent power to make orders facilitating discovery and the presentation of evidence," citing *Northpoint Homeowners Assn. v. Superior Court* (1979) 95 Cal.App.3d 241, 244. Nowhere in the *Dodge* decision did the Court address whether the trial court had the inherent authority to issue an order requiring a party to comply with an inspection that has not been formally demanded under the Act.

Movants also cite *Northpoint Homeowners Assn. v. Superior Court* (1979) 95 Cal.App.3d 241, which recognized the trial court's "inherent power to make certain orders in furtherance of the discovery and presentation of evidence related to pending civil litigation." (*Id*. at 244.) However, the *Northpoint* case, like the *Dodge* case, *supra*, involved the question of whether the trial court's issuance of a protective order to prohibit the alteration of evidence and to preserve the status quo pending trial was made in error. The statements made by the *Northpoint* Court regarding the Court's inherent authority were not blanket statements meaning that the Court could deviate from the requirements of the Discovery Act based on its inherent authority. Rather, they were made in the context of the trial court preserving the status quo to protect the integrity of the evidence. Movants are not asking for such a protective order.

In reply, movants cite *Stephen Slesinger, Inc. v. Walt Disney* (2007) 155 Cal.App.4th 736, wherein the Court discussed the trial court's inherent power to dismiss an action after violation of a court order. The movants do not request dismissal and do not identify an order that was violated by Defendant's failure to furnish the phone for forensic examination.

The movants do not herein seek an order that simply requires the preservation of evidence or the preservation of the status quo. They request an order that circumvents the Civil Discovery Act, requiring Defendant to submit to discovery that has not been formally demanded pursuant to the clearly delineated procedural rules for doing so. This motion amounts to a request for an injunction, but movants have neither attempted to nor succeeded in stating grounds for an injunction. Movants have failed to state a legal basis for the relief requested.

The Court will finally note that in paragraph 4 of Benjamin W. Turner's reply declaration he states that when the Court issued its order setting deadlines for Plaintiff to serve an inspection demand and for defendant to respond, the Court did not direct Plaintiff to withdraw this motion or to file a new motion after receiving the defendant's response. The Court may not give counsel legal advice.

2. 26CV01055, BC Engineering Group v. Azari

Cross-defendant's objections to Cross-complainant's counsel's declaration are **SUSTAINED.** Cross-defendant's demurrer to the cross-complaint is **SUSTAINED WITH LEAVE TO AMEND.** Cross-complainant may file a First Amended Cross-Complaint within 30 days of notice of this order. Cross-defendant shall submit a written order consistent with this ruling and compliant with California Rules of Court, rule 3.1312.

I. Background

Plaintiff and cross-defendant BC Engineering ("BCE"), a civil engineering firm, entered into a contract with Kamil Azari ("Azari") to provide engineering services in connection with a tasting room Azari wishes to construct on the grounds of his winery. On February 4, 2026, BCE initiated this action by filing a complaint against Azari ("Complaint"). The Complaint alleges three different causes of action alleging that Azari failed to pay $32,686.95 that he owed to BCE (Complaint at p. 3), and one cause of action alleging that Azari had "submitted planning documentation to the County of Sonoma bearing counterfeit use of BC Engineering Group's tradename and logo" (Complaint at p. 4). The Professional Services Work Order that constitutes the contract between BC and Azari (the "Contract"), is duly attached to the Complaint.

On May 4, Azari filed a cross-complaint against BCE alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and professional negligence (the "Cross-Complaint"). The Contract is also attached as an exhibit to the Cross-Complaint. The Cross-Complaint alleges that BCE breached the Contract "by failing to perform services necessary to obtaining Use Permit Approval from the County of Sonoma," and sets forth a non-exclusive list of examples of such necessary services. (Cross-Complaint ¶¶ 9, 11.) The Cross-Complaint also alleges professional negligence by BCE. (Cross-Complaint at pp. 5-6.)

This matter comes on calendar for hearing on BCE's demurrer to the Cross-Complaint.

II. Governing law

A demurrer tests whether the complaint sufficiently states a valid cause of action. (*Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747.) Complaints are read as a whole, in context, and are liberally construed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) "[T]he only issue involved in a demurrer hearing [is] whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action."(*Griffith v. Dept. of Public Works* (1956) 141 Cal.App.2d 376, 381.) This is often referred to as the "four corners" principle: a demurrer is limited to matters within the four corners of the pleading demurred to.

In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) Matters that may be judicially noticed are also considered. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Because the allegations that a court evaluating a demurrer accepts as true "necessarily include the contents of any exhibits attached to the complaint, . . . in the event of a conflict between the pleading and an exhibit, the facts contained in the exhibit take precedence over and supersede any inconsistent or contrary allegations in the pleading." (*Nealy v. County of Orange* (2020) 54 Cal.App.5th 594, 597 (citing *Jibilian v. Franchise Tax Bd.* (2006) 136 Cal.App.4th 862, 864, fn. 1).)

III. Azari's counsel's declaration and BCE's objections to it

Azari's counsel has accompanied the opposition brief with a supporting declaration ("Bradley Dec"). BCE objects to individual aspects of each paragraph of the Bradley Dec other than the first ("I am attorney of record"). (Evidentiary Objections at pp. 3-6.) BCE also objects to the declaration as a whole on the basis that it constitutes extrinsic evidence that "has no place in the analysis" of a demurrer. (Evidentiary Objections at pp. 6-7.) BCE also characterizes the declaration as an "[i]mproper attempt to amend the Cross-Complaint through opposition papers." (*Ibid.*) The Court agrees with that characterization.

The objections are sustained. The Court will disregard the Bradley Dec for purposes of ruling on the instant demurrer. However, as discussed below, the Court will grant Azari leave to amend. If he chooses, he may make any or all of the allegations in the Bradley Dec in the more appropriate context of an amended cross-complaint.

IV. Analysis

Along similar lines, the verb "allege" comes up repeatedly in Azari's opposition:

- "[Cross-Complainant] alleges that had BCE followed up in a timely manner before the Planning Commission hearing . . . , BCE would have had time to revise the engineering design again . . . ." (Oppo at pp. 1-2.)
- "Cross-Complainant . . . alleges that throughout the Project, BCE failed to use licensed engineers . . . ." (Oppo at p. 2.)
- "Azari alleges that BCE breached the Contract by failing to assign Azari's project to a licensed engineer . . . ." (*Ibid.*)
- "Cross-Complainant Azari alleges that performance of the Contract should have been handled by licensed civil engineers . . . ." (*Ibid.*)
- "Azari alleges that following up on the revised engineering plan was implied as a term of agreement . . . ." (Oppo at p. 6.)
- "Azari alleges that BEC's negligent performance of a contract for services resulted in a foreseeable financial loss . . . ." (Oppo at p. 7.)
- "As alleged, BCE's failure to follow up on its once-rejected plan submission until it was too late is . . . an incompetent performance of the agreed professional services." (*Ibid.*)
- "Azari alleges . . . that BCE assigned his case to the unlicensed brother of the principal engineer . . . ." (Oppo at p. 8.)

Again, Azari is at liberty to make all of these allegations, but doing so in a brief opposing a demurrer accomplishes nothing. The central problem, as discussed in detail below, is that the allegations need to be in the cross-complaint.

A. First Cause of Action (Breach of Agreement)

Azari's basis for the breach of contract cause of action is set forth in the *General Allegations* section of the Cross-Complaint. Azari alleges that the breach consisted of, at a minimum, BCE's failure to document or confirm the Public Works Department's verbal approval of a traffic design, and its failure "to assign Azari's project to a licensed engineer for management throughout the critical steps and processes." (Cross-Complaint ¶¶ 9, 11.)

However, the Contract does not say that BCE agreed to do either of those things. In the Contract, BCE agreed, in consideration of a fee not to exceed $7,500, to "develop[] the required application material for a Use Permit [for a tasting room] submittal to Sonoma County PRMD," and to develop "a Location/Vicinity Map, Assessor's Parcel Map Exhibit, Project Description/Proposal Statement, Site Plan, Preliminary Grading and Drainage Plan, and Preliminary Landscape and Irrigation Plans." (Contract, *Scope of Services*.) There is no mention of traffic plans, no mention of interaction with the Public Works Department over approval of them – indeed, no mention of any County agency other than PRMD – and no mention of management by a licensed engineer or anyone else.

The Contract does address what it terms "ancillary project coordination," which "may include communication and participation with public agencies for permits . . . ." That appears, at first glance, as though it might encompass communication with the Public Works Department to confirm oral approval of a traffic design. However, whether it does or not, the Contract then goes on to state that "[t]his work order" – that is, the very Contract at issue here – "does not include coordination time unless specified in the scope of services." As noted above, the *Scope of Services* section of the Contract says nothing about coordination. The Contract then states that "Ancillary coordination time will be billed per the attached rate schedule." In other words, the Contract contemplates that Azari might potentially need BCE to perform some additional services not described in the *Scope of Services* and not covered by the $7,500 fee, and that BCE might be willing to perform such additional services for additional fees. But the *Ancillary Project Coordination* section of the Contract does not constitute an agreement by either party to do anything in particular.

The Court has no difficulty in believing that Azari requested ancillary services beyond the ones described in the *Scope of Services* section of the Contract, and that BCE agreed to provide them. The Court's belief is informed, in large part, by the fact that the Contract as it stands provides for a fee not to exceed $7,500, but BCE's Complaint seeks unpaid fees of $32,686.95. The Complaint does not specify what additional services BCE agreed to perform in consideration of the additional $25,186.95 it now claims to be owed, but more importantly in the context of the instant demurrer, neither does the Cross-Complaint. It is possible that the additional services involved confirming a County agency's verbal approval of a traffic plan and the assignment of a licensed engineer to supervise the project, but it is just as possible that they did not.

Azari asks the Court to find that all of the things he faults BCE for failing to do were implied terms of the Contract. For example, "Azari alleges that following up on the revised engineering plan was implied as a term of the agreement where the express object of the agreement is to obtain an approved traffic plan for the winery." (Oppo at p. 6.) Leaving aside the point, noted above, that the appropriate context for allegations is the cross-complaint, the problem with this argument is that the express object of the Contract says nothing about approved traffic plans. The express object of the agreement is to develop "the required application material for a Use Permit," including the development of a number of exhibits and plans, none of which relate to traffic. (Contract, *Scope of Services*.) If Azari's point is that he requested BCE to prepare a traffic plan and take all steps necessary to obtain approval of it from the Department of Public Works, and that BCE agreed to do that in exchange for an additional fee, and that they breached their agreement by failing to do so, he needs to allege all of that in the cross-complaint. The Court has no basis for taking that, or any of the other things Azari argues that BCE should have done but didn't, as implied terms of the simple two-page Contract.

The demurrer is sustained as to the First Cause of Action. The Court will grant Azari leave to amend.

B. Second Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing)

Both parties assert that Azari intends to omit the Second Cause of Action in his amended cross-complaint. (MPA at p. 5, fn. 1; Oppo at p. 6.) However, as BCE correctly points out, "[n]o request for dismissal has been filed." (Reply at p. 7.) Therefore, the Court will address the merits of BCE's demurrer to the Second Cause of Action.

BCE argues that a claim of breach of the implied covenant of good faith "based solely on conduct that also constitutes breach of an express contractual provision cannot stand as an independent cause of action." (MPA at p. 5.) In support of this argument, BCE cites to *Careau & Co. v. Security Pacific Business Credit* (1990) 222 Cal.App.3d 1371. BCE is presumably relying on this passage from *Careau*: "If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated." (*Id.* at p. 1395.) However, *Careau* also suggests that a claim of breach of the implied covenant *can* co-exist with a claim for simple breach if the complaint alleges "that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." (*Ibid.*)

The Second Cause of Action, as it currently stands, contains no such allegations, and therefore it "may be disregarded as superfluous." (*Careau, supra,* 222 Cal. App.3d at p. 1395.) However, the Court recognizes the possibility that Azari might be able to amend the Cross-Complaint to include allegations that would distinguish the Second Cause of Action from the First, along the lines described by *Careau*. Therefore, the Court will sustain BCE's demurrer to the Second Cause of Action, with leave to amend. The amendment may, of course, consist of eliminating the cause of action altogether.

C. Third Cause of Action (Professional Negligence)

The Third Cause of Action is for professional negligence, a tort. There is no question that Azari seeks only economic damages, and has alleged no physical injury to either himself or his property, in connection with this cause of action. BCE argues that, therefore, the cause of action is barred by the economic loss rule, which "functions to bar claims in negligence for pure economic losses in deference to a contract between the litigating parties." (*Sheen v. Wells Fargo Bank* (2022) 12 Cal.5th 905.)

Azari relies on the principle that "[t]ort damages have been permitted in contract cases [when] the duty that gives rise to tort liability is . . . completely independent of the contract . . . ." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551-552.) The Cross-Complaint contains a conclusory allegation that BCE had such an independent duty. (Cross-Complaint ¶ 25.) In his opposition brief, Azari states that this independent duty springs from CCR Title 16 and from Bus. & Prof. Code § 6703, which defines the phrase "responsible charge of work" in the context of professional engineering work. (Oppo at p. 11.) BCE responds that the statutory definition applies only to licensing and discipline under the Professional Engineers Act and "create[s] no private right of action." (Reply at p. 8.)

Again, the instant motion is a demurrer, and analysis of demurrers is restricted to material within the four corners of the complaint. Neither Azari's explanation that the alleged duty springs from certain regulations and statutes, nor BCE's explanation that those regulations and statutes do not create a tort duty, qualifies as such material. For demurrer purposes, the only relevant question is whether Azari has adequately pleaded the elements of his professional negligence cause of action. He has not.

California courts have consistently held that *facts* that cause a tort duty to arise are essential to a negligence cause of action, but the *legal conclusion* that a duty exists is neither necessary nor proper in a complaint. (*Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, 1013; *Peter W. v. San Francisco Unified School Dist.* (1976) 60 Cal.App.3d 814, 821.) In other words, a plaintiff must plead facts from which a duty of care can be inferred, but need not and should not explicitly label or identify the legal source of that duty.

Azari has pleaded the legal conclusion but not the facts. (Cross-Complaint ¶ 25.) He alleges that BCE "owed a duty of care to AZARI with regard to its actions in providing professional services," but as the above-cited authorities demonstrate, that is a legal conclusion. The only facts Azari has alleged support the conclusion that he and BCE were in contractual privity, but do not provide any reason to conclude that BCE had a duty to Azari independent of its duty to perform as agreed in the contract, or indeed any tort duty whatsoever.

BCE's demurrer to the Third Cause of Action is sustained. The Court will grant Azari leave to amend by alleging facts from which a duty of care independent of the contract may be inferred.

V. Conclusion

The demurrer is **SUSTAINED WITH LEAVE TO AMEND**.

3. <u>25CV04579, Capital One, N.A. v. Casaday</u>

Defendant's motion to vacate judgment is **DENIED** as being procedurally defective. Defendant failed to serve the motion on the opposing party as required by CCP § 1005. Defendant also failed to include a notice of motion as required by CCP § 1005 and Cal. Rules of Court, Rules 3.1110 and 3.1112.

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

4. <u>24CV04077, Toninato v. Gonzales, DO</u>

Defendant David Gonzales DO's motion for determination of good faith settlement is **DROPPED FROM CALENDAR** as being **MOOT**. Plaintiff filed a conditional notice of settlement of entire case on August 24, 2026.

5. <u>MCV-259645, Plaza Services, LLC v. Lange</u>

Plaintiff's <u>unopposed</u> motion for Entering Judgment Pursuant to Defendant's Default Under Settlement and Release Agreement is **GRANTED**.

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

<u>Analysis:</u>

On September 26, 2022, Plaintiff filed the above-captioned action against Defendant Kirstyne Lange. Plaintiff and Defendant settled the case by entering into a written settlement agreement whereby the parties agreed that no judgment would be entered against Defendant so long as Defendant paid an agreed settlement amount in certain monthly installments.
Under the terms of the stipulation, Defendant should have paid $4,629.41 as of the date of the filing of this motion; however, Plaintiff has received only $514.60. The parties agreed that the Court shall retain jurisdiction pursuant to CCP § 664.6.

The settlement provides that of payments are not received in the amounts and by the dates set forth in the settlement agreement, then Plaintiff may immediately file a noticed motion for entry of judgment for the account balance, less credit for any payments received, plus court costs. Plaintiff seeks costs in the amount of $449.10, which the Court finds to be reasonable. Considering the terms of the settlement agreement and the Defendant's default on payments, the requested relief is granted.

6. <u>SCV-270480, Randall, JR v. Pace Supply Co.</u>

Plaintiff's motion for final approval of class action settlement is **GRANTED**. The matter is also on for approval of attorney's fees, litigation costs, an administration expenses payment, a class representative enhancement, and PAGA penalties. The request for approval of attorney's fees is **GRANTED in part**. Attorney's fees are approved in the amount of $707,720.00. The request for approval of litigation costs in the amount of $46,847.45 is **GRANTED**. The request for approval of the class representative enhancement of $9,900.00 is **GRANTED**. The request for approval of administrative expenses payment in the amount of $24,000.00 is **GRANTED**. Finally, the request for approval of PAGA penalties in the amount of $200,000.00 is **GRANTED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

I. The Settlement is Presumptively Reasonable

Plaintiff, on behalf of himself and members of a class of other current or former employees of Defendant, alleges several Labor Code violations against Defendant for the period of March 29, 2018 through September 28, 2025. The parties engaged in extensive informal discovery. They engaged in several days of mediation and ultimately reached a settlement agreement.

The parties' settlement is for a total amount of $4,000,000. They agreed that the net settlement amount would be calculated by deducting the following from the settlement sum: (1) Plaintiff's attorneys' fees and costs in the amount of 35% (est. $1,400,000) of the Settlement Amount plus actual costs not to exceed $50,000; (2) Claims Administration Costs, not to exceed $25,000 to the Claims Administrator; (3) $200,000 allocated to penalties under PAGA; and (4) a Class Representative Service payment to Plaintiff in an amount of up to $9,900.00. The remaining funds would be distributed to the class members.

This Court granted preliminary approval of the settlement on January 7, 2026. Plaintiff now seeks final approval. There have been no objectors to the settlement and only 6 requests for exclusion out of 2,649 class members, with only 23 notices deemed undeliverable.

After preliminary approval of a settlement, the court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co., supra,* at 1802.) The test is not for the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) In making this determination, the court considers all relevant factors including "the strength of [the] 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." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Plaintiff has shown the existence of each element required for the presumption of fairness to apply. The settlement was reached through arms-length negotiation, the parties engaged in sufficient investigation and discovery to inform their mediation negotiations, class counsel is experienced in similar litigation, and there are no objectors. The Court also finds that the settlement is fair considering the remaining relevant factors listed in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; i.e. 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. The Court finds the overall settlement amount of $4,000,000 to be fair, adequate, and reasonable. However, as explained below, the Court finds that a reduction must be made to the portion allocated for attorney's fees.

II. Attorney's Fees and Costs

While the Court finds the overall settlement amount to be reasonable, the Court finds the proposed deduction for attorney's fees to be unreasonable. Plaintiff's counsel requests 35% of the gross settlement fund, totaling $1,400,000. However, Plaintiff's fee estimate for the actual work performed on this matter at billing rates up to $1,000 is $468,777.50. Even if the Court accepted the billing rates presented, this would result in a fee multiplier of 2.98. Plaintiff has not justified such a tremendous fee multiplier.

A. Number of Hours and Billing Rates

Class Counsel advances that the Court should adopt a percentage fee approach, rather than a lodestar approach, as the appropriate method of calculation here. Percentage recovery focuses on results achieved whereas the lodestar focuses on time spent. Counsel is correct that the percentage approach offers substantive benefits in encouraging counsel to maximize recovery, rather than wasting time attempting to bill in order to justify lodestar amounts. However, that does not mean that Class Counsel's recovery should remain unfettered by the hours actually expended. This Court maintains the capability to "double check the reasonableness of the percentage fee through a lodestar calculation." (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504.) Our high court has stated that California trial courts maintain the discretion to use lodestar amounts to ensure that the percentage figure reached is reasonable. (*Id*. at 505.) This is representative of the Court's obligations to the class as a whole, where the interests of Defendant and Plaintiff are no longer at odds.

Class Counsel asserts that fees of 35% of the settlement amount is the appropriate figure. However, Class counsel fails to display the propriety of a 35% fee under the circumstances of this case. The Court finds the number of hours spent on this matter, 629.7, to be reasonable considering the age of the case and the work expended. However, the hourly rates requested for multiple attorneys exceed the expected rates for counsel in the county of Sonoma. "The reasonable hourly rate is that prevailing *in the community* for similar work." *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (emphasis added). Plaintiff has cited the reasonableness of their fees based on various cases. This case was filed in and is based on Plaintiff's employment within the county of Sonoma, and that is the appropriate locale to consider when determining fees within this venue. The court may consider various other factors when determining a reasonable hourly rate, including the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *See, e.g. Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632-633; *Stratton v. Beck* (2017) 9 Cal.App.5th 483, 496. The Court does not, however, find that these factors justify paying Plaintiff's counsel market rate fees for the Southern California area.

The Court finds that with the qualifications and experience set forth in the Paolo Policastro declaration, fees in line with similarly qualified attorneys in the Sonoma County community are as outlined in the table below. This would result in allowable fees of:

Attorney	Hours	Hourly Rate	Total
Joseph Lavi	111.8	$700	$78,260
Vincent G. Granberry	43.2	$650	$28,080
Jeffrey D. Klein	75	$650	$48,750
Christina M. Le	16.9	$650	$10,985
Pooja V. Patel	33.1	$550	$18,205
Michael T. Suh	42.1	$450	$18,945
William Tran	152.7	$500	$76,350
Malcolm E. Clayton	28.3	$500	$14,150
Paolo Policastro	126.6	$475	$60,135
Total	629.7		$353,860

B. Multplier

"The 'experienced trial judge is the best judge of the value of professional services rendered in his court…'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The relevant factors in determining the proper multiplier include,

> (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.

(*Ibid.*)

Plaintiff argues for a multiplier of 2.98. Considering each of the *Ketchum* factors, the Court does not agree that a multiplier of 2.98 is warranted. This matter did not involve any novelty or particular difficulty; Class Counsel's qualifications neither fall short of nor exceed those of counsel which normally appear in these types of cases; Counsel's work as filed with the Court does not contain indicia that would cause to the Court to find more than the expected skill in litigation; Class Counsel has not represented that this matter precluded counsel from other employment. Therefore, the only factor which weighs in favor of a multiplier is the contingent nature of the case. This case has been pending since early 2022. Accordingly, Class Counsel has been working on this matter for over 4 years unpaid. Though the Court would typically find a multiplier of 1.5 to be sufficient in a case such as this, the Court finds the application of a higher multiplier than normal to be appropriate here considering the percentage fee approach and the fees that were noticed to the class. The Court finds a multiplier of 2.0 to be appropriate under the circumstances.

The total awarded for attorney's fees is $707,720.00. This represents 17.69% of the gross settlement amount and consists of a lodestar of $353,860 with a 2.0 fee multiplier. The Court finds this amount sufficient to compensate Class Counsel, especially considering that the work actually expended on this matter at rates exceeding those acceptable in this locality produced a total lodestar of $468,777.50.

Plaintiff requests $46,847.45 in litigation costs. This is less than the $50,000 originally estimated and agreed upon by the parties. The Court finds this request to be reasonable and sufficiently supported.

III. Remaining Deductions

The Court finds the remaining deductions for the class representative enhancement, the administrative expenses payment and the PAGA penalties to be reasonable and they are granted.

7. 25CV06507, Shipley v. Provencher

Plaintiff's motion for reconsideration is **DENIED**.

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

Analysis:

A motion for reconsideration requires the moving party to show the existence of new or different facts, circumstances, or law. (CCP § 1008(a).) "[A] court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.'" (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.) The jurisdictional prerequisite is not satisfied by arguing that the Court "misinterpreted" California law in its initial decision. (*Ibid*.) "Since in almost all instances, the losing party will believe that the trial court's 'different' interpretation of the law or facts was erroneous, to interpret the statute as [granting the trial court jurisdiction to reconsider where the moving party simply disagrees with the Court's interpretation of the law] would be contrary to the clear legislative intent to restrict motions to reconsider to circumstances where a party offers the court some fact or authority that was not previously considered by it." (*Ibid*.)

Plaintiff moves for reconsideration pursuant to CCP § 1008 of the Court's June 22, 2026 Order Granting Douglas B. Provencher and Embolden Law PC's Motion to Set Aside Default. Plaintiff argues that the Court did not address certain arguments made by Plaintiff in his opposition to the underlying motion.

Plaintiff has failed to raise any new or different facts, circumstances, or law. Plaintiff reiterates arguments already raised in his opposition to the underlying motion, which the Court took into consideration. Simply because the Court did not specifically address the arguments in the Court's written ruling does not mean that the Court did not consider them.

Even if they had not been previously raised, Plaintiff has not presented any new law. The law on which Plaintiff bases his arguments in this motion all existed prior to the Court's issuance of the underlying order. Plaintiff's position amounts to an argument that the Court misinterpreted California law in granting the underlying motion. Such is insufficient to confer jurisdiction upon the Court to reconsider the order.

Plaintiff has also failed to present any new facts or circumstances that would confer jurisdiction on this Court to reconsider the order. Plaintiff represents that he did not comply with the Court's procedures for requesting oral argument and thus oral argument was not held. This does not constitute a new fact under the statute. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.)

> [F]irst, respondent argues that the trial court misinterpreted California law in its initial decision…Second, respondent urges that the fact that it had not intended to waive oral argument on the initial motions constitutes a "new" fact or circumstance sufficient to satisfy the statute. We find both of respondent's contentions meritless.

(*Ibid*.)

Plaintiff further complains that the order was prepared solely by Defendant without his input, but fails to allege or demonstrate that Defendant failed to comply with the required procedures for preparing and submitting proposed orders. Even if that were true, it would not constitute grounds for reconsidering the decision to grant the motion. It might provide grounds for a request to modify the language of the order, but it would not provide grounds for changing the overall outcome.

8-9. SCV-269767, Ravioli, LLC v. Master Bango

1. Cross-Claimants' petition to confirm arbitration award is **GRANTED**.

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

Analysis:

On December 1, 2021, Plaintiffs, Ravioli LLC, Spaghetti LLC, and Tortellini LLC, initiated this action against Defendants Master Bango and Ronald Ferraro alleging several causes of action arising out of Defendants' alleged breach of the parties' contract, labeled "Bulk Flower Purchase Agreement" (hereafter, "Purchase Agreement") The Purchase Agreement provides that seller agrees to sell and buyer agrees to buy bulk cannabis flower of the types, prices, and quantities specified in Section E. Section E provides a list of the products, quantities, and prices to be purchased from which entities. The entities listed as providers of these products include Fettuccine LLC, Farfalle LLC, Gnocchi LLC, Rigatoni LLC, Linguini LLC, Spaghetti LLC, Tortellini LLC, Penne LLC, and Ravioli LLC. The Purchase Agreement also contains an arbitration clause. The Purchase Agreement is signed by Ronald Ferrero on behalf of Defendant, Master Bongo Inc., and by Peter Simon, CEO of "Seller," which is identified as "Pasta Farm."

On October 11, 2022, Defendant Master Bango Inc. ("Master Bango") filed a Cross-Complaint against Plaintiffs alleging several causes of action arising out of Plaintiffs' alleged breaches of the same Purchase Agreement, which was attached to the Cross-Complaint.

On February 16, 2024, Master Bango filed arbitration demands against four other entities listed in the Purchase Agreement: Rigatoni LLC, Linguini LLC, Farfalle LLC, and Gnocchi LLC, alleging breaches by them of the same Purchase Agreement.

On November 6, 2024, this Court issued an order denying Plaintiffs (Ravioli LLC, Spaghetti LLC, and Tortellini LLC)'s motion to compel arbitration. The Court found that Plaintiffs had shown an enforceable arbitration agreement existed between the parties. However, since Plaintiffs had litigated their case against Master Bango for years before bringing the motion, the Court found that the right to compel arbitration had been waived by them.

On September 24, 2025, Master Bango filed a First Amended Cross-Complaint adding as cross-defendants Pasta Farm (several "Pasta Farm" entities alleged), Fettucine LLC, Penne LLC, Farfalle LLC, Gnocchi LLC, Rigatoni LLC, Linguini LLC, and Ziti LLC.

After being added into this litigation, Cross-Defendants Farfalle LLC, Gnocchi LLC, Fettuccine LLC, Linguine LLC, Rigatoni LLC, Penne LLC, Ziti LLC, and Pasta Farm moved the Court for an order compelling Master Bango's claims against them into arbitration. The Court granted this motion.

After having initiated arbitration against the above-noted parties, on June 10, 2025, Master Bango withdrew its claims against them. However, Linguini LLC, Rigatoni LLC, Gnocchi LLC, Farfalle LLC, Penne LLC and Fettuccini LLC ("Respondents") moved the Arbitrator for summary disposition of a claim pursuant to Rule 18 of the JAMS rules. Respondents sought declaratory relief to establish that since Petitioner abandoned its affirmative claims under the Purchase Agreement, there remained no liability as to contractual claims that it might otherwise have under the Purchase Agreement pertaining to the claims asserted in the consolidated Arbitration proceedings. The Arbitrator awarded Respondents with the declaratory relief requested, as well as attorney's fees and costs after determining them to be the prevailing party.

Master Bango moved to have the Arbitrator's award vacated on the grounds that the Arbitrator exceeded its powers. Having found that the Arbitrator did not exceed his powers, the Court denied Master Bango's motion. The Court incorporates its August 16, 2026 Order Denying Master Bango's Petition to Vacate Arbitration Award into this ruling. Respondents/Cross-Complainants now seek an order confirming the arbitration award.

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

"Section 1285.4 prescribes the requirements for a petition to confirm an arbitration award. 'A petition to confirm need only set forth (1) the names of the arbitrators, (2) the arbitration agreement (by description or attached copy), and (3) the award and written opinion of the arbitrators (by description or attached copy).'" (*Valencia v. Mendoza* (2024) 103 Cal.App.5th 427, 442.) "[O]nce a petition to confirm that meets the statutory requirements has been served, 'the burden is on the party attacking the award to affirmatively establish the existence of error.'" (*Ibid.*)

Cross-Claimants' petition meets the statutory requirements and has been served upon Master Bango. Master Bango was unsuccessful in its attempt to attack the arbitration award. Accordingly, this Court shall confirm the award.

2. Defendant Ronald Ferraro's motion for summary judgment is **DENIED**. Defendant's alternative motion for summary adjudication is **DENIED**.

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

Evidentiary Objections:

Plaintiffs' objections to the Declaration of Ronald Ferrero are **OVERRULED**.

The Court declines to rule on Defendant's objections to the Declaration of Henry E. Johnson pursuant to CCP § 437c(q).

Background and Summary:

In Plaintiffs' operative Second Amended Complaint, they assert causes of action arising out of an agreement for the sale of bulk cannabis flower entered into by Plaintiffs ("Pasta Farm" or "the Pasta Farm entities") and Defendant Master Bango. Plaintiffs allege that Defendant Ronald Ferraro (hereafter "Defendant" or "Defendant Ferraro") is the CEO, Secretary, and/or CFO of Master Bango. They allege that Master Bango is the alter ego of Defendant Ferraro. As alleged,

1) There exists a unity of interest and ownership between the Defendants such that any separateness has ceased to exist because Defendant Ferraro:
    a. Used assets of Master Bango for his personal uses;
    b. Caused the assets of Master Bango to be transferred to himself without adequate consideration;
    c. Withdrew funds from the bank accounts of Master Bango for the indiscriminate use by Defendant Ferraro.
2) Defendant Ferraro comingled personal funds with corporate funds.
3) Defendant has dissipated or sold products received from Plaintiffs in an illegal fashion and without compliance with local and state cannabis regulations.
4) Defendant has not kept accurate accounts or properly tracked cannabis products obtained from Plaintiffs.
5) Master Bango lacks sufficient assets to pay its debts and liabilities.
6) Defendant has used Master Bango as a shield to engage in tortious activity such that it would inequitable to adhere to the fiction of a separate corporate entity especially where, as here, the ownership of stock in Mater Bango is vested primarily with Defendant Ferraro.

(SAC ⁋ 3-4.)

The Court heard the demurrer filed by both Defendants to the Second Amended Complaint on July 2, 2025 and overruled it in its entirety, finding Plaintiffs' allegations against both defendants to be sufficient.

Defendant Ferraro now seeks summary judgment, or in the alternative, summary adjudication of the causes of action against him based on his argument that (1) the Second Amended Complaint does not state an alter ego claim against him, and (2) the undisputed evidence defeats the elements of alter ego liability.

Defendant submits that the evidence shows he became the Chief Executive Officer, Secretary, Chief Financial Officer, and Director of Master Bango on April 1, 2018. (Def. Undisputed Material Facts "DUMF," 7.) The Restated Articles of Incorporation authorized Master Bango to issue up to 10,000,000 shares of stock, 6,000 of which were issued to Defendant Ferraro. (DUMF 11-12.) On September 19, 2019, Master Bango and Ron Ferraro entered into (i) a stock restriction agreement; (ii) an indemnity agreement; and (iii) a confidentiality and invention assignment agreement. (DUMF, 13.)

Defendant submits that the profit and loss statements for 2020 through 2022 show that Master Bango was profitable and its assets exceeded its liabilities. (DUMF, 26-31.) Further, Master Bango has fulfilled all of its other financial obligations such as payroll, rent, and payments to other vendors and at all relevant times, Master Bango maintained its own bank accounts. (DUMF 32-33.)

Defendant argues that the evidence submitted by him in support of this motion is sufficient to show the lack of triable issue of material fact as to alter ego liability. For the reasons stated below, Defendant's argument is unpersuasive.

Analysis:

I. The Second Amended Complaint Sufficiently States an Alter Ego Claim against Defendant Ferrero

A party is required only to allege ultimate facts to support an alter ego theory, not specific facts. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 236.) Defendant's argument that Plaintiff's failure to allege specific "evidentiary facts" to support the alter ego theory is unavailing. Defendant's argument that Plaintiffs' "information and belief" allegations are insufficient is likewise unavailing. "[T]he 'less particularity [of pleading] is required where the defendant may be assumed to possess knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff…'" (*Ibid*.)

Plaintiffs have alleged sufficient ultimate facts in support of the alter ego theory and have sufficiently supported their allegations that are based on information and belief. (See above; SAC ⁋ 3-4.) The Court notes that it has already once before found Plaintiffs' allegations against Defendant Ferraro to be sufficiently pleaded. (July 11, 2025 Order Overruling Defendants' Demurrer to Second Amended Complaint.)

II. Defendant Has Failed to Meet His Initial Burden of Showing a Lack of Triable Issue of

Material Fact as to Alter Ego Liability

"It has been stated that the two requirements for application of [the alter ego] doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." (*Automotriz Del Golfo De California S. A. De C. V. v. Resnick* (1957) 47 Cal.2d 792, 796.)

> Factors for the trial court to consider include the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. [Citation.] "No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.]"

(*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1342; see also *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811-812.)

In support of his argument that there lacks a triable issue of material fact regarding alter ego liability, Defendant has submitted evidence to show that Master Bango was adequately capitalized, observed corporate formalities, had its own separate bank accounts, and made the payment to Plaintiffs under the contract. Such is insufficient to show a lack of triable issue of material fact. Adequate capitalization, observation of corporate formalities, and having separate bank accounts from which payments are made are not the only factors that the Court must consider when determining alter ego liability. Rather, the Court analysis is guided by the pleadings. Plaintiff asserts several other factors indicating that Master Bango is the alter ego of Defendant Ferraro. Such factors are outlined above and include, but are not limited to, using assets of Master Bango for Defendant's personal uses, causing the assets of Master Bango to be transferred to himself without adequate consideration, withdrawing funds from the bank accounts of Master Bango for the indiscriminate use by Defendant Ferraro, commingling personal funds with corporate funds, using Master Bango as a shield to engage in tortious activity, etc. (SAC ⁋ 3-4.) While Defendant has submitted some financial records, they are insufficient to show that Defendant never used Master Bango assets for his own personal uses, that no commingling occurred, or that no funds were withdrawn by Defendant for his own use. The evidence submitted by Defendant is likewise insufficient to show a lack of triable issue of material fact as to each of the remaining factors of alter ego liability pleaded by Plaintiff.

Defendant argues that Plaintiffs "have not come forward" with evidence of wrongdoing or injustice flowing from the recognition of a separate corporate identify. This argument is ineffective. A defendant can show a lack of triable issue of material fact by showing that the plaintiff does not possess, and cannot reasonably obtain, needed evidence, but he must do so "with evidence" and cannot simply "point [it] out." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) The argument that Plaintiffs have not "come forward" with evidence shows neither that Plaintiffs no not possess the evidence nor that they cannot reasonably obtain the evidence needed to make such a showing. Defendant has failed to show the lack of triable issue of material fact. As such, the burden on this motion never shifted to Plaintiffs.

10. <u>26CV01987, Bourbon & Birdies, LLC v. Town of Windsor</u>

Respondent's request for judicial notice of the CC&Rs is **GRANTED.**

Respondent's demurrer is **SUSTAINED WITH LEAVE TO AMEND.** Petitioner may file a First Amended Petition within 30 days of notice of this order. Respondent shall submit a written order consistent with this ruling and compliant with California Rules of Court, rule 3.1312.

I. Background

Bourbon & Birdies Investments, LLC ("Petitioner") owns a building (the "Building") in the Windsor Palms Plaza II shopping center in the town of Windsor (along with the Windsor Town Council, "Town" or "Respondent"). In 2007, Petitioner divided the Building into commercial condominium units. In connection with that action, Petitioner adopted and recorded a Declaration of Covenants, Conditions, and Restrictions (RJN Exh. 1) ("CC&Rs"). The CC&Rs contain the following relevant provisions:

> 19.1 **<u>Third Party Beneficiary.</u>** Notwithstanding anything in this Declaration to the contrary, the Town, or any governmental body with jurisdiction which is its successor in interest, is a third party beneficiary of this Declaration within the meaning of Civil Code § 1559, and as such, has the rights described herein.
>
> 19.4 **<u>Town Consent Required.</u>** Notwithstanding anything herein to the contrary, the provisions of this Declaration cannot be amended or rescinded without the prior written consent of the Town . . . . Any purported amendment of this Declaration without the prior written approval of the Town shall be ineffective, void and unenforceable.

(CC&Rs at pp. 64-66.)

The Building's owners' association ("Association") has repeatedly voted to amend the CC&Rs to adjust the formula by which Common Area Maintenance ("CAM") fees are allocated among the owners of the individual condominium units, but Town has declined to approve the amendments. (Petition ¶¶ 18-20.) The Association subsequently voted to amend the CC&Rs to limit the types of amendment requiring Town's approval, but Town also declined to approve that amendment. (Petition ¶¶ 22-23.)

On March 25, 2026, Petitioner filed the operative Petition for Writ of Administrative Mandate and Complaint for Damages, Declaratory Relief, and Injunctive Relief ("Petition"). The Petition alleges one cause of action seeking a writ of mandate, another seeking a writ of administrative mandamus, and two alleging intentional and negligent interference with prospective economic relations. This matter comes on calendar for hearing on Town's demurrer to the Petition.

II. Standard on demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. (*Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747.) Complaints are read as a whole, in context, and are liberally construed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) "[T]he only issue involved in a demurrer hearing [is] whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action."(*Griffith v. Dept. of Public Works* (1956) 141 Cal.App.2d 376, 381.) This is often referred to as the "four corners" principle: a demurrer is limited to matters within the four corners of the pleading demurred to.

In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) Matters that may be judicially noticed are also considered. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

III. Analysis

A. First Cause of Action: Petition for Writ of Mandate (CCP § 1085)

1. Governing law

CCP § 1085 authorizes the issuance of a writ of mandate to compel performance of an act that the law specifically designates as a duty of a government entity. California courts have interpreted this statute to permit two independent theories of relief: to compel the performance of a purely ministerial duty, or to correct an abuse of discretion. (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 105.) Under the latter theory, a trial court reviews an administrative action "to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." (*Klajic v. Castaic Lake Water Agcy.* (2001) 90 Cal.App.4th 987, 995.) "That mandate will lie whenever an administrative board has abused its discretion is a rule so well established as to be beyond question." (*Manjares v. Newton* (1966) 64 Cal.2d 365, 370.)

While "traditional mandate will lie to correct abuses of discretion, a party seeking review under traditional mandamus must show the public official or agency invested with discretion acted arbitrarily, capriciously, fraudulently, or without due regard for his rights, and that the action prejudiced him." (*Gordon v. Horsley* (2001) 86 Cal.App.4th 336, 351.) "Mandamus may issue to correct the exercise of discretionary legislative power, *but only* if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law. This is a highly deferential test." (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1265, original emphasis.)

"The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (CCP § 1086.)

2. Petitioner has adequately pleaded Town's abuse of discretion.

Town faults Petitioner for failing to plead that Town has a ministerial duty to approve Petitioner's CC&R amendments, or that Petitioner has a right to the performance of that duty. (Oppo at p. 11, citing *Jacobs v. Regents of Univ. of Cal.* (2017) 13 Cal.App.5th 17, 24.) Indeed, Petitioner has not pled any factual basis for either of those points, and the Court suspects that Town is correct in suggesting that it has no such ministerial duty. However, the opposition brief makes it clear that Petitioner's theory is that Town's refusal to approve the amendments is an abuse of discretion, rather than violation of a ministerial duty: "the Town exceeded its jurisdiction by controlling internal CC&R cost-allocation amendments without a legitimate governmental purpose, denied Petitioner a fair hearing by failing to meaningfully consider the evidence, and *abused its discretion* by denying Petitioner's requested Amendment while approving materially similar relief for Windsor Palms Plaza II Commons." (Oppo at p. 2, emphasis supplied.) As noted above, abuse of discretion is a valid independent basis for a writ of mandate.

Petitioner alleges that "the Windsor Palms Plaza II Commons" ("Commons"), "a separate entity from the Building," adopted amendments to its own CC&Rs that are substantially similar to the ones proposed by Petitioner and the Association, and that Town "voted to accept the requested change and voted to amend [Commons's] CC&Rs such that the Town's approval is no longer required for changes to those CC&Rs." (Petition ¶¶ 1, 17, 18, 21.) Petitioner further alleges that "The Town . . . engaged in arbitrary and capricious conduct by declining to adopt [Petitioner's] Amendment . . . in direct contradiction with its decision to adopt a similar amendment two months prior for [Commons]." (Petition ¶¶ 32, 34.) In the Court's view, these allegations, if true – as the Court must assume they are for demurrer purposes – are sufficient, at the pleading stage, to satisfy the "arbitrary, capricious, or entirely lacking in evidentiary support" element of a cause of action for writ of mandate. (*Klajic, supra,* 90 Cal.App.4th at p. 995.)

Town disagrees, noting that "the question is whether the agency's action has a reasonable basis in law and a reasonable basis in fact." (Reply at p. 6, citing *Martis Camp Cmty. Ass'n v. County of Placer* (2020) 53 Cal.App.4th 569, 595.) Town then suggests that there *is* such a basis, because Town's denial of the proposed amendments was "a valid exercise of their third-party beneficiary rights under the CC&Rs." But the fact that Town was exercising its third-party beneficiary rights merely explains why Town had the discretion to make the findings; it says nothing about whether the discretion was abused. Town then notes that courts "defer to an agency's factual findings unless no reasonable person could have reached the same conclusions on the evidence before it."(*Id.,* again citing *Martis Camp*). But there are no factual findings here to defer to. No evidence before the Court bears on the question of why Town denied Petitioner's CC&R amendments but accepted Commons's – and if there were such evidence, the Court would be constrained to ignore it for demurrer purposes unless it appeared within the four corners of the Petition. Town may, of course, adduce such evidence in the course of the litigation.

3. Petitioner has failed to plead the lack of a remedy at law.

However, Petitioner has failed to plead that there is no adequate remedy at law. Such allegations are required: "To warrant relief in the form of a writ of mandate requiring a party to take (or not to take) certain actions in the future, the petitioner must demonstrate there is no adequate legal remedy." (*California School Boards Assn. v. State of California* (2011) 192 Cal.App.4th 770, 794.) This does not mean that Petitioner need only add "we have no adequate remedy at law" to the Petition; a general allegation that the petitioner has no remedy at law, without reference to any facts, is not sufficient to sustain the petitioner's burden. (*Lohr v. Superior Court* (1952) 111 Cal.App.2d

231, 234.) Petitioner must allege facts supporting the lack of a remedy at law, not merely the legal conclusion that there is none.
The demurrer to the First Cause of Action is granted with leave to amend.

B. Second Cause of Action: Petition for Writ of Administrative Mandamus (CCP § 1094.5)

Petitioner's Second Cause of Action explicitly "seeks a writ pursuant to CCP section 1094.5 . . . ." (Petition ¶ 37.) That statute authorizes the issuance of a writ "for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal . . . ."

Petitioner has alleged that Town's various decisions to deny the requested amendments were made following Town Council hearings. (Petition ¶¶ 19, 20, 21, 23.) Petitioner has also alleged that its agent attended one of those hearings and spoke in favor of the amendment at issue. (Petition ¶ 24.) But Petitioner has not alleged that any of these hearings were required by law to be given, or that evidence was required by law to be taken at them.

In its opposition, Petitioner argues that "Windsor Municipal Code section 17.66.020, entitled 'Permit Modification and Revocation: Hearing and Notice,' governed [the proceeding at which one of the amendments was declined] because the Town treated the requested amendment as a modification of the land-use approvals applicable to the development." (Oppo at pp. 2-3.) In the first place, the fact that Town elected to treat the requested amendment that way does not mean that Town was *required* to treat it that way, and CCP § 1094.5 says "a hearing is *required* to be given."

More importantly, the cited section of the Windsor Municipal Code is as follows, in its entirety:

> 17.66.020 – Hearing and Notice
>
> A. The Review Authority shall hold a public hearing to revoke or modify an application, entitlement, or permit granted in compliance with the provisions of this Zoning Code.
> B. Ten (10) days before the public hearing, notice shall be delivered in writing to the applicant and/or owner of the property for which the permit was granted.
> C. Notice shall be deemed delivered two (2) days after being mailed, certified and first class, through the United States Postal Service, postage paid, to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property.

Even supposing arguendo that the requested amendment qualified as a modification to an entitlement, and that section 17.66.020(A) therefore required a public hearing, nothing in the regulation suggests that "evidence is required to be taken" at such a hearing, and that is another prerequisite for a CCP § 1094.5 writ.

Even more importantly than either of those points, the instant motion is a demurrer, and therefore the only question before the Court is whether the causes of action are adequately pleaded. The Second Cause of Action is not, because there are no allegations of facts that would authorize the Court to grant a writ pursuant to CCP § 1094.5. Petitioner has provided a lengthy explanation of why the court is so authorized. (Oppo at pp. 1-4.) But none of Petitioner's points correspond to allegations in the Petition.

The demurrer to the Second Cause of Action is granted. Leave to amend is granted.

C. Third and Fourth Causes of Action (respectively Intentional Interference with Prospective Economic Relations and Negligent Interference with Prospective Economic Relations)

1. The causes of action plead legal conclusions, not facts.

"[A] complaint must contain only allegations of ultimate facts as opposed to allegations of evidentiary facts or legal conclusions or arguments." (*Burke v. Superior Court* (1969) 71 Cal.2d 276, 279, fn. 4.) A leading treatise concedes that the distinction between ultimate facts, evidentiary facts, and legal conclusions is often a murky one, but offers this instructive example: "A complaint in a personal injury case alleges that: (1) defendant drove his car immediately after having consumed a fifth of vodka; (2) defendant drove while under the influence of alcohol; and (3) defendant drove in violation of California drunk driving law. [¶] Allegation '(1)' is technically objectionable as 'evidentiary' matter; '(3)' is a 'legal conclusion'; while '(2)' is the ultimate fact." (Rutter Group, *Civil Procedure Before Trial* ¶¶ 6:124, 6:125.)

The allegations in the Third and Fourth Causes of Action closely resemble the pattern jury instructions on intentional and negligent interference with prospective economic relations, CACI nos. 2202 and 2204; so closely that the Court suspects they may have been simply copied from there. Whether they were or not, they are for the most part legal conclusions, not ultimate facts. For example, the Third Cause of Action alleges that "Petitioner was in an economic relationship with third parties that probably would have resulted in an economic benefit to Petitioner." (Petition¶ 47.) The Court can infer that these third parties are the owners of the individual condominium units in the Building, although it would have been better to actually say that. But then, it alleges that "Respondents were aware of these economic relationships," without providing any facts that, if true, would prove that Town was aware. (Petition ¶ 48.) That is purely a legal conclusion. And then, the Petition alleges that "Petitioner's economic relationships were disrupted." (Petition ¶ 51.) The Petition does not describe the nature of the disruption, or allege any ultimate facts to support the legal conclusion that Petitioner's un-described economic relationship with un-named third parties was disrupted by Town's refusal to adopt an amendment to CC&Rs that had been in place since 2007. The Fourth Cause of Action suffers from similar defects.

2. Petitioner has not pleaded compliance with the Government Claims Act.

Because Town is a public entity, Petitioner can only sue Town for money damages, as Petitioner purports to do in the Third and Fourth Causes of Action, in compliance with the Government Claims Act. (Govt. Code §§ 810 et seq.) In order to comply, Petitioner's tort causes of action must satisfy two pleading requirements: they must identify a statutory basis for liability, and they must allege compliance with the Government Claims Act's pre-suit claim presentation requirements. The Third and Fourth Causes of action do not comply with either requirement.

a. Statutory basis for liability must be pleaded.

"[A]ll public entities in California, state and local, are liable in tort only to the extent declared by statute." (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 370.) Because all governmental tort liability flows from the Government Claims Act, a plaintiff alleging a tort cause of action against a public entity "must plead facts sufficient to show his cause of action lies outside the breadth of any applicable statutory immunity." (*Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal.App.3d 882, 885-886.)

b. Pre-suit presentation must be pleaded.

"In general, no suit for damages may be maintained against a governmental entity unless a formal claim has been presented to such entity, and has been rejected (or is deemed rejected by the passage of time)." (Rutter Group, *Civil Procedure Before Trial* ¶ 1:646, citing Govt. Code §§ 912.4, 945.4 and *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767, 1776.)
"The procedural requirements for claim presentation are prerequisites to litigation against a local public entity or employee thereof based not only on tort liability, but on any claim for 'money or damages.' ([Govt. Code] § 905.) A cause of action that is subject to the statutory claim procedure must allege either that the plaintiff complied with the claims presentation requirement, or that a recognized exception or excuse for noncompliance exists. . . . If the plaintiff fails to include the necessary allegations, the complaint is subject to attack by demurrer." (*Gong, supra,* 226 Cal.App.4th at p. 374, citing *State of Calif. v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239.)

3. The demurrers are sustained

The demurrers to the Third and Fourth Causes of Action are sustained. The failure to plead pre-suit presentation of the claims to Town comes very close to being incurable by amendment; it can be cured only if Petitioner actually did present the claims but neglected to plead that fact. The Court regards this as unlikely, but since it cannot say for sure that it did not happen, leave to amend will be granted.

IV. Conclusion

The demurrer is **SUSTAINED WITH LEAVE TO AMEND**.

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