TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, January 28, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 24CV01061, O'Connell v. City of Santa Rosa

Defendants John Rodgers and William Phillip Rodgers ("Defendants") move the Court for an order deeming the Requests for Admission (Set Two) as admitted against self-represented Plaintiff David O'Connell, pursuant to Code of Civil Procedure ("C.C.P.") section 2033.280.

Where there is a lack of any response to a request for admission, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).) A party who "fails to serve a timely response" to requests for admissions waives any objection to those requests. (C.C.P. § 2033.280(a).)

Though Defendants served Plaintiff with the Requests for Admission, Set Two, on August 14, 2025, Plaintiff has failed to provide any responses to or to request any extensions to respond to the discovery requests. (Motion, 3:19-23.) Defendants attempted to meet and confer with Plaintiff via correspondence regarding the discovery requests, but did not receive any response. (McElhenny Decl., ¶¶ 4-7.) Defendants served the moving papers by mail to Plaintiff's personal address, but Plaintiff did not file any opposition. (Proof of Service dated October 28, 2025.)

The Court notes that Plaintiff is now self-represented because his previous counsel was relieved by this Court as counsel of record through noticed motion on July 23, 2025. (See Minute Order dated July 23, 2025.)

Regardless, being self-represented does not relieve Plaintiff of his obligations to timely respond to discovery requests.

The Court **GRANTS** Defendants' motion and, unless oral argument is requested, the Court will sign the proposed order lodged with this motion.

2. 25CV00751, Kingsborough v. Guy

The hearing on Defendants' demurrer to Plaintiffs' First Amended Complaint is **CONTINUED** to Wednesday, April 15, 2026, at 3:00 P.M. in Department 17. Plaintiffs Cindy and Richard Kingsborough filed a Notice of Automatic Stay due to bankruptcy proceedings pending against them. Plaintiffs filed a timely opposition to the demurrer, but the Court will continue the hearing nonetheless due to the automatic stay. Plaintiffs shall notify the Court on completion of the bankruptcy so that the Court may hear Defendants' demurrer. Any reply to the opposition may be filed 5 court days before the next hearing.

3. 25CV01946, Hickey v. City of Petaluma

Plaintiff Vince Hickey's ("Plaintiff") motion to quash deposition subpoena for production of Plaintiff's medical records is **GRANTED in part** and **DENIED in part** pursuant to C.C.P. section 1985.3, as described in detail below. Plaintiff's request for reasonable attorney's fees pursuant to C.C.P. section 1987.2 is **DENIED**.

I. PROCEDURAL HISTORY

This action arises from injuries Plaintiff sustained while riding his bicycle on October 14, 2024, on or about 400 Hopper Street in Petaluma, California, 94952, by hitting a base with exposed lock bolts and nuts allegedly belonging to a lighting or railroad fixture. (Complaint, ¶¶ 18–20.) Plaintiff claims general and special damages, hospital and medical expenses, loss of earnings and earnings capacity, and restitution of money and property, among other relief. (*Id.* at 13:3–12.) On July 10, 2025, Defendant Sonoma Marin Area Rail Transit ("SMART") propounded discovery, including Form Interrogatories (Set One), Special Interrogatories (Set One), and Requests for Production of Documents, on Plaintiff. (Yaghoobian Declaration, Exhibit A; Horsey Declaration, ¶ 3.) On August 8, 2025, SMART issued subpoenas to Petaluma Valley Hospital, Saint Joseph Health System, Santa Rose Memorial Hospital, Radia California Radiology Medical Group, Sonoma Valley Emergency Physician Medical Group, Inc., Elite Medical Clinic, Precise Imaging, Charlotte Sue, M.D., and John Hallett, M.D. (Yaghoobian Declaration, Exhibit C; Horsey Declaration, ¶ 4.) On August 11, 2025, Plaintiff served responses to Form Interrogatories (Set One), Special Interrogatories (Set One), and Requests for Production of Documents, which included a description of his injuries sustained, and a meet and confer request asking for SMART to limit the scope of the subpoenas. (Yaghoobian Declaration, Exhibits B and D; Horsey Declaration, ¶ 5, Exhibit B.) On August 12, 2025, SMART's counsel agreed to amend the issued subpoenas to limit the scope no more than ten years prior to Plaintiff's accident. (Yaghoobian Declaration, Exhibit E; Horsey Declaration, ¶ 7, Exhibit D.) However, Plaintiff sought to further limit the scope of the subpoenas to the records relevant only to the areas of Plaintiff's body where he alleged injury as a result of the accident. (Yaghoobian Declaration, Exhibit F; Horsey Declaration, ¶ 7, Exhibit D.) SMART did not agree to the body-part limitation and Plaintiff filed the instant motion to quash the subpoenas. (Yaghoobian Declaration, Exhibit G; Horsey Declaration, ¶ 8, Exhibit E.)

II. ANALYSIS

A. Legal Standard

Pursuant to C.C.P. section 1987.1, a party, witness, consumer per section 1985.3, or employee per section 1985.6, may bring a motion to quash, condition, or modify a subpoena requiring attendance or production of items before a court, at trial, or a deposition. The court may also on such a motion make an order "as appropriate to protect the person from unreasonable or oppressive demands…." (C.C.P. § 1987.1.)

In general, the scope of discovery allowed by the Civil Discovery Act is broad and the standard for "relevance" is a liberal one. (C.C.P. § 2017.010; *Glenfeld Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter is either itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (C.C.P. § 2017.010.) Admissibility is not the test, and it is sufficient if the information sought might reasonably lead to other admissible evidence. (*Glenfeld, supra*, 53 Cal.App.4th at 1117).

B. Plaintiff's Motion to Quash

Plaintiff argues that SMART's subpoenas are overbroad and seek Plaintiff's protected medical records that are irrelevant to the injuries alleged in the Complaint. (Motion to Quash, 8:8–10:2.) Plaintiff contends that he has a right of privacy as to the physical and mental conditions that are unrelated to the claim, relying on *Britt v. Superior Court* (1978) 20 Cal.3d 844 and *Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379. (*Ibid.*) Plaintiff requests sanctions pursuant to C.C.P. section 1987.2. (*Id.* at 10:4–22.)

In its Opposition, SMART claims that physical and mental examinations regarding physical or mental conditions that are in controversy in the action are discoverable because such records may be material to the defendant's defense including whether the current physical complaints are related to past medical conditions or pre-existed the accident. (Opposition, 3:17–5:22.) SMART affirms that its subpoenas are tailored to seek documents and information that is reasonably calculated to lead to the discovery of admissible evidence and do not violate Plaintiff's right to privacy because the Court's interest in facilitating the ascertainment of truth in connection with legal proceedings is sufficiently compelling to justify disclosure. (*Id.* at 5:24–7:10.) SMART further argues that Plaintiff's motion to quash is deficient for failure to submit a separate statement as required by rule 3.1345(a)(5) of the California Rules of Court and Plaintiff's motion should be denied on this basis alone. (*Id.* at 7:24–8:4.) Lastly, SMART asserts that Plaintiff's request for sanctions lacks substantial justification and that Plaintiff failed to provide any law or fact that the subpoenas are oppressive as required by C.C.P. section 1987.2(a). (*Id.* at 8:7–24.)

Plaintiff did not file a Reply.

C. Application

Motion to Quash

In the Complaint, Plaintiff alleges that the impact from the accident caused him "to suffer severe injuries, including but not limited to significant trauma to the left side of his face, arm, and hand" and that Plaintiff has "ongoing pain and suffering." (Complaint, ¶¶ 20, 23.) In response to Form Interrogatory Nos. 6.2

and 6.3 asking for the injuries and complaints Plaintiff attributes to the accident, Plaintiff responded with the following: cellulitis of the right leg, swelling and abscess in the right groin/thigh, tracking fluid collection in the right groin, "being pierced by metal rods", pain in his left hand, abrasions on his head, and "pain in his shoulder and arm." (Yaghoobian Declaration, Exhibit B.) Plaintiff represents that the subpoenas seek "any and all" of Plaintiff's medical and billing records "from any and all dates." (Motion to Quash, 4:7–10.) The Parties have already agreed to limit the scope of the subpoenas to the ten years before the subject incident but do not agree to the limitation of records based on the injuries alleged.

First, while Plaintiff did not file a separate statement with his motion to quash per rule 3.1345(a)(5) of the California Rules of Court, Plaintiff quoted the language of the subpoenas he challenges in his motion. This is sufficient for the Court to understand and analyze Plaintiff's arguments and clearly sufficient for SMART since it timely opposed Plaintiff's motion with substantive arguments.

Regarding privacy concerns, even though there is a partial implicit waiver of a party's constitutional privacy rights by bringing suit, such waiver only encompasses discovery directly relevant to the plaintiff's claim and essential to the fair resolution of the lawsuit. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1015; see also *Britt, supra*, 20 Cal.3d at 864 [reasoning that plaintiffs may not withhold information which relates to any physical or mental condition which they have put in issue by bringing the lawsuit but that plaintiffs were entitled to retain confidentiality of all unrelated medical or psychotherapeutic treatment they may have undergone in the past].) Plaintiff has put the medical records pertaining to the areas of his body that were injured at issue in this case and SMART is entitled to Plaintiff's medical records as a result. As described above, Plaintiff does not allege injury to his entire body. Thus, SMART's request for *all* Plaintiff's medical records is facially overbroad. However, not all of Plaintiff's alleged injuries in the Complaint and in his responses to Form Interrogatories are clear to the Court. Plaintiff has clearly put the following body parts at issue: right leg (including right groin and right thigh area) and left hand. Abrasions on his head, "being pierced by metal rods," and "pain in shoulder and arm" lack adequate specificity for the Court to accurately and fairly limit the scope of Plaintiff's medical records sought. For example, the Court is unsure whether a claim of abrasions on Plaintiff's head implies any head trauma or brain injury which may warrant the release of Plaintiff's mental health records. Therefore, the Parties shall meet and confer further to determine what is directly relevant to Plaintiff's alleged injuries for: abrasions on his head, "being pierced by metal rods," and "pain in shoulder and arm."

Sanctions

Plaintiff requests $2,000.00 in reasonable attorney's fees pursuant to C.C.P. section 1987.2. While Plaintiff is partially successful in his motion to quash, the Court **DENIES** Plaintiff's request for sanctions as neither party has acted in bad faith. The Court does not find that the motion was made or opposed in bad faith or without substantial justification or that the subpoenas were oppressive. Plaintiff's records should be limited to the areas of his body at issue in this case for protection of his privacy, rendering SMART's subpoenas overbroad. However, a request for all medical records is not oppressive when Plaintiff was not sufficiently specific about his injuries in the Complaint or discovery responses to allow SMART to serve more tailored subpoenas.

III. CONCLUSION

Based on the foregoing, Plaintiff's motion to quash is **GRANTED in part** and **DENIED in part**. SMART is entitled to Plaintiff's medical records for the past ten years regarding Plaintiff's right leg (including

right groin and right thigh area) and left hand. The Parties are ORDERED to meet and confer further to determine what is directly relevant to Plaintiff's alleged injuries for: abrasions on his head, "being pierced by metal rods," and "pain in shoulder and arm." Plaintiff's request for sanctions is **DENIED**.

Plaintiff's counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 25CV05025, Najee v. Graton Economic Development Authority

Graton Economic Development Authority (doing business as Graton Resort and Casino) ("GEDA") specially appears to quash service of summons and dismiss the Complaint on the basis of tribal sovereign immunity. The *unopposed* motion is **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff alleges that he sustained injuries on November 6, 2024, from an improperly placed six-foot metal "No Smoking" sign while he was on Graton's property located at 288 Golf Course Drive W, Rohnert Park, California 94928. (See Complaint, ¶¶ 1–2, filed August 5, 2025.) The Complaint alleges causes of action for negligence, premises liability, violation of the American with Disabilities Act, and negligence–failure to preserve and produce evidence. (*Id.* at 3:8–4:26.) Plaintiff previously filed a Notice of Claim with GEDA on February 20, 2025, pursuant to the Federated Indians of Graton Rancheria Tort Statute (the "Tort Statute"), which was effectively abandoned for failure to timely comply with the Tort Statute's procedural requirements. (Keohane Declaration, ¶ 14.) GEDA specially appears requesting that the Court quash service of summons on GEDA and dismiss the Complaint with prejudice against GEDA on the basis of sovereign immunity.

II. ANALYSIS

A. Legal Standard on Sovereign Immunity

Indian tribes are immune from suit and such immunity is not subject to diminution by the States. (*People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 234–235.) The doctrine of tribal immunity is based on the rationale that tribes are immune from suit by virtue of their sovereign status and to promote tribal self-governance. (*Id.* at 235 [citations omitted].) "Tribal immunity applies in both federal and state court and extends to 'suits arising from a tribe's commercial activities, even when they take place off Indian lands.'" (*Id.* at 235 [citations omitted].)

Tribal sovereign immunity extends to entities beyond the tribe itself, but such entities must be an "arm of the tribe." (*Id.* at 237.) To determine whether a tribally affiliated entity is an "arm of the tribe," the California Supreme Court articulated a five-factor test considering: (1) the entity's method of creation, (2) whether the tribe intended the entity to share in its immunity, (3) the entity's purpose, (4) the tribe's control over the entity, and (5) the financial relationship between the tribe and the entity. (*Id.* at 236.) No single factor is universally dispositive. (*Id.* at 248.) The entity asserting immunity bears the burden of showing by a preponderance of the evidence that it is an "arm of the tribe" entitled to tribal immunity. (*Id.* at 236.) "Once the entity demonstrates that it is an arm of the tribe, it is immune from suit unless the opposing party can show that tribal immunity has been abrogated or waived." (*Ibid.*) A tribe's waiver of immunity must be clear. (*Id.* at 235 [citations omitted].) "Because sovereign immunity deprives a court of subject matter jurisdiction, California courts have authorized Indian tribes and their officials to specially appear and invoke their immunity from suit by using a 'hybrid motion to quash/dismiss.' " (*Brown v. Garcia* (2017) 17 Cal.App.5th 1198, 1204 [citations omitted].)

B. GEDA's Organization and Management

The Federated Indians of Graton Rancheria ("the Tribe") is a federally recognized Indian tribe. (See Request for Judicial Notice, Exhibit A.) The Tribe owns and operates Graton Resort and Casino through its unincorporated subordinate agency, Graton Economic Development Authority (doing business as Graton Resort and Casino), which the Tribe governs. (Motion, 2:24–3:1; Keohane Declaration, ¶¶ 2–4.) The Tribal government and business operations are located on federally owned trust land known as the Federated Indians of Graton Rancheria Indian Reservation. (Motion, 3:2–5; Keohane Declaration, ¶ 3.) GEDA was established as a Tribal instrumentality/agency to exercise the Tribe's ownership, management, and supervision of Graton Resort and Casino. (Motion, 3:5–7; Keohane Declaration, ¶ 4.) The Tribe adopted the Federated Indians of Graton Rancheria Economic Development Authority Statute ("the Statute"), which expressly states the Tribe's sovereign immunity to GEDA. (Motion, 3:7–9; Keohane Declaration, ¶¶ 5, 8.) The GEDA Board of Directors provide monthly reports to the Tribal Council to monitor and evaluate GEDA's activities, such as financial statements, balance sheets, reports, audits, notices, and lawsuits or claims made or paid by the enterprises. (Motion, 3:7–9; Keohane Declaration, ¶ 9.) The Statute states the Tribe's intent is to share its privileges and immunities with GEDA. (Motion, 4:1–2; Keohane Declaration, ¶ 8.)

C. Graton's Request for Judicial Notice

Judicial notice of regulations, legislative enactments issued by or under the authority of the United States, and the law of an organization of nations are statutorily appropriate. (Evid. Code § 452(b), (f).) The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.)

GEDA requests judicial notice of a federal regulation that lists the 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes: 83 Fed.Reg. 34864, et seq. (January 28, 2022.) This request is **GRANTED** pursuant to section 452(b) of the Evidence Code.

D. GEDA's Motion to Quash Service of Summons/Dismiss

GEDA argues that neither the Tribal Council nor GEDA have expressly waived their sovereign immunity to be sued in the Sonoma County Superior Court. (Motion, 4:3–4, 6:14–7:6; Keohane Declaration, ¶ 12.) GEDA contends that the Tort Statute is the exclusive remedy for suits alleging onsite injuries at Graton Resort and Casino. (Motion, 4:4–6; Keohane Declaration, ¶ 13.) GEDA asserts that the Tribe's immunity extends to Graton Resort and Casino because it is a wholly owned and operated economic enterprise of the Tribe. (Motion, 5:18–6:12.) Thus, GEDA's argument is that the Court lacks subject matter jurisdiction of this dispute and requests that the Court quash service of summons and dismiss the Complaint with prejudice. (Motion, 4:20–5:15.)

E. Application

a. "Arm of the Tribe" Test

GEDA's Method of Creation

In considering this factor, courts have focused on the law under which the entity was formed. (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 245 relying on *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort* (10th Cir. 2010) 629 F.3d 1173 [other citations omitted].) Formation under

tribal law weighs in favor of immunity while formation under state law has been held to weigh against immunity. (*Id.* at 245–246 [citations omitted].)

Here, Mr. Keohane (GEDA's General Counsel) states that GEDA is an entity formed under the laws of the Tribe. (Keohane Declaration, ¶ 5.) Thus, this factor weighs in favor of immunity.

Intent to Share Immunity

Generally, the tribal ordinance or articles of incorporation creating the entity express whether the tribe intended the entity to share in its immunity. (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 246.) This factor will generally weigh against immunity if the record is silent as to the tribe's intent. (*Ibid.*) A court may infer the tribe's intent from its actions or other sources, even where such intent is not express. (*Ibid.*)

Here, GEDA presents Section 10.1 of the Federated Indians of Graton Rancheria Economic Development Authority Statute, which states in part: "As an instrumentality of the Tribe, the Authority, its Board, business enterprises, employees, advisers, attorneys and contractors shall have the benefit of all the privileges, sovereignty and immunities of the Tribe, including sovereign immunity from unconsented suit." (Keohane Declaration, ¶ 8.) Therefore, it is clear that the Tribe intended to share its immunity with GEDA and this factor weighs toward immunity.

GEDA's Purpose

To weigh in favor of immunity, the entity's stated purpose does not need to be purely governmental so long as it relates to broader goals of tribal self-governance. (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 246.) "If the entity was created to develop the tribe's economy, fund its governmental services, or promote cultural autonomy, its purpose pertains to tribal self-governance notwithstanding the entity's commercial activities." (*Ibid.* citing *Breakthrough, supra*, 629 F.3d at p. 1192 [tribal gaming authority and casino "were created for the financial benefit of the Tribe and to enable it to engage in various governmental functions"].) This factor will weigh against immunity if the entity was created "'solely for business purposes and without any declared objective of promoting the [tribe's] general tribal or economic development.'" (*Id.* at 246 [citations omitted].) "If the entity's stated purpose is sufficiently related to tribal self-governance, the inquiry then examines the extent to which the entity actually serves that purpose. The fit between stated purpose and practical execution need not be exact, but the closer the fit, the more it will weigh in favor of immunity." (*Id.* at 247.)

Here, GEDA argues that Section 1.2 of the Statute states that the Tribe created GEDA to "further the economic prosperity of the Tribe" and "to exercise the Tribe's right to own and operate the Tribe's gaming operation under the fictitious name of Graton Resort & Casino and such other business ventures as the Tribe in which the Tribe may choose to engage." (Motion, 3:16, 6:4–6; Keohane Declaration ¶ 6.) This is not a purely economic purpose and it is sufficiently related to tribal self-governance. The Court finds that the fit between GEDA's purpose and execution are a moderately close fit, favoring immunity.

Tribe's Control Over GEDA

A tribe's control over the entity involves "structure, ownership, and management, including the amount of control the Tribe has over the entities." (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 247 [citations omitted].) "Relevant considerations include the entity's formal governance structure, the extent to which it is owned by the tribe, and the entity's day-to-day management." (*Ibid*.) "Evidence that the tribe actively directs or oversees the operation of the entity weighs in favor of immunity; evidence that the tribe is a passive owner, neglects its governance roles, or otherwise exercises little or no control or oversight weighs against immunity." (*Ibid.* [citations omitted].)

Here, GEDA is governed by the Board of Directors, which is comprised of Tribal citizens appointed by the Tribal Council. (Motion, 6:6–7.) The Graton Rancheria Economic Development Authority Statute requires the Board of Directors to provide monthly reports to Tribal Council to "monitor and evaluate GEDA's activities, including written copies of financial statements and balance sheets and any material changes, reports, audits, notices, lawsuits or claims made or paid by the enterprises." (*Id.* at 3:19–23; Keohane Declaration, ¶ 9.) Audited reports are given to Tribal Council and the Board of Directors is required to report to the Tribe's General Council no less than annually. (*Id.* at 3:23–25; Keohane Declaration, ¶ 9.) Furthermore, all revenues from the Casino are collected solely by GEDA on behalf of the Tribe, which then the Tribal Council alone determine of how much GEDA retains for operations and how much it remits to the Tribal Government. (Keohane Declaration, ¶ 10.) The Court finds that the Tribe is not a passive owner of GEDA and exercises significant control over GEDA. Thus, this factor weighs in favor of immunity.

Financial Relationship Between the Tribe and Graton

"The starting point for analyzing the financial relationship between the entity and the tribe is whether a judgment against the entity would reach the tribe's assets." (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 247 [citations omitted].) "Courts consider the extent to which the tribe 'depends ... on the [entity] for revenue to fund its governmental functions, its support of tribal members, and its search for other economic development opportunities.' " (*Id.* at 248 [citations omitted].) "The entity must do more than simply assert that it generates some revenue for the tribe in order to tilt this factor in favor of immunity" because any imposition of liability on a tribally affiliated entity could theoretically impact tribal finances. (*Ibid.*)

While Mr. Keohane states that Tribal Council alone determines how much of the net revenues are split among GEDA operations and remittance to the Tribal government, he does not give any more specificity as to the approximate percentage of revenue allocation between GEDA operations and the Tribal government. The moving papers also fail to present evidence that a judgment against GEDA would necessarily reach the Tribe's assets. Thus, this factor does not favor immunity.

However, the balancing of the factors favor GEDA's immunity. The Court finds that GEDA has shown by a preponderance of the evidence that GEDA is an arm of the Tribe.

b. Plaintiff's Burden

Since GEDA demonstrated that it is an arm of the tribe, Plaintiff must show that immunity has been waived or abrogated. (*People v. Miami Nation Enterprises, supra*, 2 Cal.5th at 236.) Plaintiff fails to meet his burden by failing to oppose this motion. Additionally, GEDA contends that neither the Tribe nor GEDA have waived their immunity. (Motion, 6:26–7:6.) Thus, this Court lacks subject matter jurisdiction.

III. CONCLUSION

GEDA's motion is **GRANTED**. The Court quashes Plaintiff's service of summons of Defendant GEDA. The Complaint is dismissed as to Defendant GEDA *without* prejudice. Defendants Melissa Modzelewski, Tribal First, and DOES 1 through 50 remain.

GEDA's counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5-6. 25CV05368,Oglesby v. Sonoma Specialty Hospital, LLC

Plaintiff's Special Motion to Strike Pursuant to California Anti-SLAPP Statute is **DENIED**. Defendant's request for attorney's fees and costs are **GRANTED**, subject to final proof of fees and costs actually and reasonably incurred.

Defendant's Motion to Lift Stay on Discovery Pending Hearing on Plaintiff's Anti-SLAPP Motion is **DROPPED** as **MOOT** in light of the ruling on the motion to strike. They stay on discovery is now lifted.

I. FACTS

Plaintiff complains that during her employment with Defendant as a Quality Coordinator, Defendant discriminated against her because of disability, failed to engage in the interactive process regarding her disability and accommodation needs, failed to accommodate her disability, and retaliated against her for asserting her rights. She contends that, as a result of an automobile accident, she requires physical therapy and medical appointments. She also asserts that she initially had been successfully fulfilling her duties through a self-managed flex schedule, with no set specific work hours, to meet her healthcare needs. However, she complains, Defendant eventually accused Plaintiff of engaging in "wage theft" and "time theft," so required Plaintiff to work a regular schedule and monitored her schedule, without engaging in an adequate interactive process with Plaintiff. She also contends that Defendant's decisions failed to accommodate her needs and were in retaliation for Plaintiff requesting appropriate accommodation.

She asserts causes of action for disability discrimination in violation of the Fair Employment and Housing Act ("FEHA"), failure to engage in the interactive process, failure to accommodate, retaliation in violation of FEHA, and retaliation in violation of the California Family Rights Act at Government Code ("Gov. Code") section 12945.2.

Defendant filed a cross-complaint against Plaintiff for conversion, breach of the fiduciary duty of loyalty, and trespass. It alleges that after going on leave on about May 6, 2025, Plaintiff and another person, as yet unidentified, entered Defendant's property after business hours and without authorization and, without permission, took property belonging to Defendant. More specifically, it alleges that Plaintiff and her companion attempted to enter through the front door only to find that it was locked and that they were therefore unable to enter, so they instead went to a back door which was broken and thereby gained entry. It also alleges that as a Quality Coordinator Plaintiff was responsible for project management to use data and analysis for improving the quality of patient care, so had access to internal systems and confidential information. Defendant adds that it is aware of this misconduct because video records from security cameras on the property show Plaintiff engaging in the alleged conduct. It also alleges that while it is not clear from the videos what Plaintiff took, because it was concealed in a box, Defendant's investigation has led it to believe that Plaintiff took documents containing confidential trade secrets regarding its business models.

II. MOTIONS

In her Special Motion to Strike Pursuant to California Anti-SLAPP Statute, Plaintiff moves the Court pursuant to Code of Civil Procedure ("CCP") section 425.16 to strike Defendant's cross-complaint and to award her attorney's fees and costs of $8,560. She argues that the cross-complaint arises from her protected activity because Defendant filed it in retaliation for her bringing her discrimination complaint, using it as leverage or an effort to silence and intimidate her. She also contends that Defendant lacks sufficient evidence to support a probability of success.

Defendant opposes the motion, arguing that the cross-complaint does not arise from protected activity because Defendant has brought no cause of action or allegation based on Plaintiff filing her complaint or asserting her employment rights. Instead, it argues, the cross-complaint is solely based on unrelated, unprotected activity of accessing Defendant's closed business property without authorization and taking property belonging to Defendant. It also asserts that it has sufficient evidence to support its allegations, including surveillance video content from security cameras on the property showing Plaintiff engaging in the alleged conduct.

Plaintiff replies, reiterating her arguments and filing objections to some of Defendant's evidence.

Defendant has also filed a Motion to Lift Stay on Discovery Pending Hearing on Plaintiff's Anti-SLAPP Motion. Plaintiff filed an opposition and Defendant filed a reply. Because the Court, as explained herein, denies the motion strike, the discovery stay is lifted, rendering this motion moot. The Court therefore drops the matter and there is no basis for reaching a discussion of its merits.

III. AUTHORITY AND STANDARDS FOR THE SPECIAL MOTION TO STRIKE

CCP section 425.16 allows defendants to make a motion to strike the complaint of an alleged Strategic Lawsuit Against Public Participation ("SLAPP") lawsuit. A SLAPP suit is one brought "primarily to chill the valid exercise of constitutional rights." CCP section 425.16.

Section 425.16 specifies that it "shall be construed broadly" to protect the constitutional right of petition and free speech and it protects a broad variety of conduct which subdivisions (b)(1) and (e) define as being any "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue." See also *Braun v. Chronicle Pub. Co.* (1997) 52 Cal.App.4th 1036, 1044-1045. Subdivision (e) specifies that this includes oral statements or writings "made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law"; or "in connection with an issue under consideration or review" in such proceedings. Section 425.16(e)(1), (2). The statute also covers free speech in general if related to a matter of public interest, for subdivision (e)(3) includes statements "made in a place open to the public or a public forum in connection with an issue of public interest" while (e)(4) even protects "any other *conduct* in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Speech or petition activity before a governmental body is protected, therefore, whether or not it involves an issue of public interest. *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116.

This protection also makes it illegal to engage in oppressive litigation conduct designed to discourage opponents from utilizing the courts to seek redress. *Church of Scientology of California v. Wollersheim* (1996) 42 Cal.App. 4th 628.

Thus, litigation activity may be protected activity and '"[a] cause of action 'arising from' defendant's litigation activity may appropriately be the subject of a section 425.16 motion to strike." [Citation.] Rusheen v. Cohen (2006) 37 Cal.App.4th 1048, 1056.

Shifting Burden of Proof

The defendant must make a prima facie showing that plaintiff's lawsuit arises from defendant's protected activity, or exercise of free speech rights in connection with a public issue. *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1365. Once defendant achieves this, the burden shifts to plaintiff to make a prima facie showing of a "probability" that plaintiff will prevail on the claims. *Dixon v. Sup.Ct.* (1996) 44 Cal.App.4th944, 950-953.

A "probability" of success requires plaintiff to show a legally sufficient claim *and* a prima facie showing of facts sufficient to support a favorable judgment supported by competent, admissible evidence within the declarant's personal knowledge. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291; *Wollersheim*, *supra,* at 654-655; *Evans v Unkow* (1995) 38 Cal.App. 4th 1490, 1497-1498. Declarations on information and belief are insufficient and generally a party cannot rely on allegations in its own pleadings, even if verified. *Wollersheim, supra,* at 656; *Unkow, supra,* at 1497.

Allegations versus Claimed Motivations

Because the actual allegations and causes of action must themselves "arise from" protected activity, this determination is based on the allegations rather than the moving party's claims of the "true" motivations. Accordingly, the Court must look to the conduct and injuries which are the subject of the complaint, not what the party claims has motivated the lawsuit, in this case the cross-complaint.

The court in *Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Assn*. (2018) 19 Cal.App.5th 399, at 413, explained that '[t]he term "cause of action" as found in motions under section 425.16, subdivision (b)(1) is to be interpreted in a particular way, as allowing the targeting only of "claims that are based on the conduct protected by the statute," ' quoting the Supreme Court's decision in *Baral v. Schnitt* (2016) 1 Cal.5th 376, at 382. The court added '[i]n contrast, where an allegation in a pleading is "'merely incidental' or 'collateral,'" it is not properly subject to being stricken under section 425.16. [Citation.] "Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." [Citation.]'

Similarly, the court in *Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation, Inc*. (2019) 32 Cal.App.5th 458 stated, at 467-468,

> As we have put it, "In order for a complaint to be within the anti-SLAPP statute, the 'critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity.' [Citation.] To make that determination, we look to the 'principal thrust or gravamen of the plaintiff's cause of action.' [Citations.]
> Our Supreme Court has recently put it this way: "A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.]
> "Critically, 'the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech.' [Citation.] ... The focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.' [Citation.] 'The only means specified in section 425.16 by which a moving defendant can satisfy the ["arising from"] requirement is to demonstrate that the defendant's conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) ....' [Citation.] In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." [Citation.]

Accordingly, the Supreme Court in *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057 explained, at 1060, that a "claim may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted." The Supreme Court reiterated this later in *Wilson v. Cable News Network* (2019) 7 Cal.5th 871, at 884, where it quoted and relied on *Park*.

The court in *Olive Properties, L.P. v. Coolwaters Enterprises, Inc*. (2015) 241 Cal.App.4th 1169, explained that an action therefore does not arise from protected activity merely because it was "triggered" or motivated by the moving party's own lawsuit. In *Olive Properties*, a landlord filed an unlawful detainer ("UD") action against a tenant, who brought an anti-SLAPP motion to strike, asserting that the UD action was in retaliation for the tenant's prior lawsuit. The trial court denied the motion and the court of appeal affirmed, holding that the UD complaint was based on tenant's unprotected activity in failing to pay rent and common-area maintenance charges rather than the prior lawsuit and thus it did not arise from protected activity. The court determined that even if the tenant's own lawsuit had "triggered" the UD action, so that the latter was in retaliation, the gravamen of the UD was not itself protected activity.

Central Valley Hospitalists v. Dignity Health (2018) 19 Cal.App.5th 203, as with the court in *Olive Properties,* rejected the moving party's claim that certain protected activity was the real motivation for the claims, because on their face the claims expressly did not address such activity. The court explained that the allegations, *not the defendant's claims of underlying motivations*, determine whether a cause of action arises from protected activity.

IV. FIRST STEP: WHETHER THE CROSS-COMPLAINT ARISES FROM PROTECTED ACTIVITY

Plaintiff unequivocally fails to meet her burden of showing that the cross-complaint arises from protected activity. Plaintiff asserts that the cross-complaint arises from protected activity solely because Plaintiff's own complaint against Defendant motivated the latter to bring claims in response as an effort to put pressure on Plaintiff. She relies entirely on her assertions regarding Defendant's underlying motivations and does not base her motion on Defendant's actual claims.

As noted above, the cross-complaint asserts only causes of action against Plaintiff for conversion, breach of the fiduciary duty of loyalty, and trespass. These causes of action are based solely on allegations that, after going on leave from work, Plaintiff and another person entered Defendant's locked property after business hours and without authorization by gaining entrance through a broken door and, without permission, took property belonging to Defendant, thereby injuring Defendant. On their face, these alleged actions and injuries are not protected activity and have no relation to any such protected activity. They are also unrelated to Plaintiff's own lawsuit. At no point in the cross-complaint does Defendant mention, much less base any cause of action or alleged injury on, Plaintiff's own complaint or litigation activity, or assertion of rights under FEHA or other applicable law.

Moreover, as explained above, a court must look solely to the allegations in Defendant's cross-complaint and not to whether protected activity was a triggering motivation.

Plaintiff offers absolutely nothing to support her argument and on the face of the pleadings, there is no basis whatsoever for finding the cross-complaint arose from protected activity.

On this basis, the Court DENIES the motion. Because Plaintiff has, without question, failed to meet her burden on the first step of the analysis, the Court need not reach the second step, and the sufficiency of the evidence supporting Defendant's claims. This also renders the evidentiary objections moot.

V. SECOND STEP: DEFENDANT'S PROBABILITY OF SUCCESS

As noted above, because Plaintiff has failed to demonstrate that the cross-complaint arises from protected activity, there is no basis for reaching the second step. Nonetheless, the Court here considers whether Defendant has satisfied its burden of demonstrating a probability of success based on the standards set forth above.

Evidentiary Objections

In the opposition papers, Defendant objects to certain statements in Plaintiff's declaration regarding her conduct when entering Defendant's property after business hours, what she took, and her communications with, as she says, Defendant's human resources supervisor, Whitney Gerrans ("Gerrans"). It asserts hearsay, lack of personal knowledge, and lack of authentication. It also asserts objections directed, at least in part, to any possible assertion by Plaintiff of what other people understood or stated. The Court OVERRULES these objections.

In her reply papers, Plaintiff objects to portions of the declaration of Whitney Gerrans ("Gerrans Dec.") filed with the opposition. Plaintiff objects to the declarant's statements about the declarant's job duties as human resources supervisor, Plaintiff's work schedule, and video evidence of Plaintiff's activities on Defendant's property. She objects on the bases of hearsay, lack of foundation, vagueness, and lack of relevance. The Court also notes that Plaintiff herself largely admits, in her declaration, to the basic conduct shown in the photographs to which she objects, specifically entering the premises on the date in question and taking items. Therefore, the objection to those photos is moot. The Court OVERRULES these objections.

Discussion of the Probability of Success

Preliminarily, Defendant asserts facially valid causes of action. Plaintiff asserts that the face of the cross-complaint fails to allege valid causes of action, but her argument is based on factual and evidentiary assertions, not the face of the allegations.

Plaintiff asserts that the allegations are insufficient because she, as an employee of Defendant, was authorized to enter the premises. However, the allegations expressly state that Plaintiff entered the premises after work hours, without authorization, Plaintiff was unable to enter through the main door because it was locked and she lacked the authority to open it, and Plaintiff improperly entered the building through a broken back door. Plaintiff contends that she only took her own personal property when she entered Defendant's premises. She provides evidence supporting this contention. However, the allegations state that Plaintiff took property belonging to Defendant and that Defendant believes this to have included documents and trade secrets, although Defendant lacks the evidence to be certain of exactly what Plaintiff took.

Defendant likewise provides evidence in the Gerrans Declaration supporting the allegations in the cross-complaint. This includes photographs of Plaintiff and another person entering Defendant's premises, as alleged, and taking unidentified items. As noted above, Plaintiff in her own declaration admits to the basic conduct shown in the photographs and forming part of the basis of the allegations, specifically entering Defendant's premises on the date in question and taking items.

The primary factual dispute and uncertainty is therefore over what Plaintiff took. At this time, Defendant is unable to determine what Plaintiff has taken and this is the basis for Defendant's request to lift the stay on discovery in order to obtain discovery into this issue. Had the Court found this action to arise from protected activity and therefore found a basis for requiring Defendant to demonstrate a sufficient probability of success, the Court would have continued this motion to allow Defendant to conduct limited discovery into the relevant factual issues. As explained, however, this Court has found the motion to be meritless under the first part of the analysis, resulting in the Court denying the motion on that basis. This renders the evidence and the need for discovery moot.

VI. FEES AND COSTS

A prevailing party on an anti-SLAPP special motion to strike may be entitled to recover fees and costs but the standards for determining this differ depending on whether the prevailing party was the defendant

moving to strike or the plaintiff opposing the motion to strike. Consideration of the differences in the standards for the two sides is important for fully considering a motion for fees and costs brought on this basis.

The "prevailing defendant" on a motion to strike a SLAPP suit "*shall* be entitled" to recover fees and costs and if a plaintiff prevails, the court "*shall* award costs and reasonable attorney's fees" to the plaintiff but only pursuant to CCP section 128.5 and *"[i]f* the court finds that [the motion] is frivolous or is solely intended to cause unnecessary delay." CCP section 425.16(c), emphasis added. In both cases, the award is *mandatory*. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1375, 1388 (mandatory for prevailing plaintiff if court finds motion to be frivolous).

The moving party may make a motion for fees after the anti-SLAPP motion has been granted. *American Humane Ass'n v. L.A. Times Communications* (2001) 92 Cal.App.4th 1095, 1103. If the moving party successfully strikes only part of the complaint, the court should award costs and fees only as to the causes of action stricken. *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020.

The statute is not clear as to what fees and costs are recoverable. According to *Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, at 1383, legislative history shows the statute was intended only to allow the fees and costs incurred on the motion to strike, not the entire litigation. On the other hand, courts should broadly construe the provision for fees to effect the policy of compensating the prevailing defendant for the cost of defending against a baseless lawsuit. *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.

As explained above, the motion is unpersuasive. Plaintiff is therefore not entitled to recover fees and costs.

Defendant also seeks to recover fees and costs, consisting of $11,067 for work at $595 an hour consisting of 2.8 hours for a related motion to lift the stay of discovery, 1.1 hours on an ex parte application for that motion, and 9.2 hours on the opposition to this motion, including time spent meeting and conferring. Declaration of Imbar Sagi-Lebowitz, ¶¶5-6. Additionally, Defendant seeks compensation for anticipated time for the hearing and reply for the motion to lift the discovery stay.

The Court finds this motion to have been facially frivolous. Given the clear applicable authority and the standards for analyzing whether an action arises from protected activity, the Court finds there to have been no basis whatsoever for the motion. Moreover, the Court finds the authority governing this determination to be so clear and well settled that Plaintiff could not have reasonably believed the motion to have been valid. Plaintiff clearly has a potential basis for challenging the merits of the cross-complaint on the facts, but this is irrelevant to this motion. In this instance, Plaintiff's motion is wholly and unequivocally groundless with respect to the fundamental first step, rendering the motion frivolous.

The Court therefore GRANTS Defendant's request for fees, subject to final proof of fees actually and reasonably incurred.

VII. CONCLUSION

The court DENIES the motion as explained above and GRANTS Defendant's request for attorney's fees and costs as set forth above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

7. SCV-264723, Addington v. Ridgeway Distribution, LLC

Self-represented Plaintiff/Cross-Defendant David Addington's ("Addington") motion to vacate judgment as to personal liability is **DENIED**, for reasons stated below.

I. PROCEDURAL HISTORY

On December 8, 2023, this Court entered a Judgment (the "Judgment) in this action which ordered the following:

1. Addington and Piner Partners shall take nothing from any and all defendants under their complaint in this action.

2. Ridgeway Parties shall be awarded damages in the sum of $58,006.50 on their Cross-Complaint against Addington and Piner Partners, GP who are both jointly and severally liable for said damages.

3. Humboldt Growers Network and the Dodges shall be awarded damages in the amount of $2,580,000.00 against Addington and Piner Partners, GP, who are both jointly and severally liable for said damages.

4. Defendants shall recover their costs against Plaintiffs.

5. Cross-Complainant Ridgeway Distribution shall recover its costs against Cross-Defendants Addington, Piner Partners, GP, and California Champ, LLC. Cross-Complainants Humboldt Growers Network, Inc. and Tobias Dodge shall recover their costs against Cross-Defendants Addington and Piner Partners, GP.

Plaintiffs/Cross-Defendants moved for a new trial, which the Court denied on all of the grounds stated in the motion. (See Order on Plaintiffs'/Cross-Defendants' Motion for New Trial dated February 27, 2024.) Addington submitted three appeals, which were all dismissed with remittiturs issued.

Now the Court considers Addington's motion to vacate judgment as to personal liability filed June 16, 2025. (Motion, 1:22-27.) Though Addington had filed a separate motion to set aside on the basis of judicial estoppel on June 23, 2025, Addington later withdrew that motion. For that reason, all briefs, requests, and objections filed only in connection with the June 23, 2025, motion will not be considered while those filed in connection with both motions or only the June 16, 2025, motion will be considered. Defendants/Cross-Complainants Tobias Dodge and Humboldt Growers Network, Inc. ("Cross-Complainants") oppose the motion and submitted an objection to Addington's declarations. Addington submitted a reply to the opposition and objections.

II. REQUESTS FOR JUDICIAL NOTICE

The Court **DENIES** Addington's requests for judicial notice for failure to comply with California Rules of Court, Rule 3.1306(c), as described in Cross-Complainants' objection to these requests.

Per sections 452(d) and 453, the Court also **GRANTS** Cross-Complainants' requests for judicial notice as to:

1. Complaint in Interpleader, filed on January 8, 2021, in Case No. MCV-251745.
2. Judgment After Court Trial, filed on July 22, 2021, in Case No. MCV-251745.
3. Order Granting Attorney's Fees, filed on March 22, 2022, in Case No. MCV-251745.
4. Decision by Appellate Division Affirming Trial Court's Order Denying Post-Judgment C.C.P. section 473(b) Set-Aside Motion, in Case No. MCV-251745.
5. Order Granting Motion to Dismiss Appeals, filed on March 26, 2025.
6. Order Denying Appellant's Motion to Vacate Dismissal and reinstate appeal, filed on May 15, 2025.
7. Order Denying Appellant's Petition for Rehearing filed on May 19, 2025.

III. OBJECTIONS TO EVIDENCE

Cross-Complainants' objection to Addington's requests for judicial notice for failure to comply with California Rules of Court, Rule 3.1306(c) are **SUSTAINED**.

Cross-Complainants' objections to Paragraphs 3 and 5-10 of Addington's Declaration, filed June 16, 2025, are **OVERRULED**.

IV. ANALYSIS

Legal Standard

As C.C.P. §473(d) provides in relevant part, the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) In other words, "the court can only make the record show that something was actually done at a previous time; a nunc pro tunc order cannot declare that something was done which was not done." (*Johnson & Johnson v. Sup. Ct.* (1985) 38 Cal.3d 243, 256.) The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117-18.)

Addington's Motion to Vacate

Addington moves to vacate the Judgment entered against him as to his personal liability pursuant to C.C.P. sections 473(d) and 187 on the grounds that the Court imposed personal liability against him despite no pleadings alleging personal liability, no trial regarding such issues, no findings to support personal liability, and an express acknowledgment in the Amended Statement of Decision that Addington acted only as an agent of legal entities. (Motion, 2:1-4, 5:11-24.)

Cross-Complainants' Opposition

In their Opposition, Tobias Dodge and Humboldt essentially argue that there is no basis for Addington's claim because the undisputed evidence presented at trial showed that Addington as an individual was a general partner of Piner Partners, rendering him personally liable for Piner Partners' liability under both the Breach of Contract and Interference with Economic Relations causes of action. (Opposition, 5:14-25.) The Opposition notes that this issue has also already been raised in the Motion for New Trial that the Court denied. (*Id*. at 5:23-24.)

The Opposition also argues that Addington failed to show any basis to vacate the Court's final judgment because the motion did not state any facts constituting extrinsic fraud or mistake by the Court. (Opposition, 6:3-22.)

Addington's Reply

Addington filed a response to each objection filed by Cross-Complainants, which have already been addressed above. In the reply, Addington reaffirms the arguments that were made in the motion.

Application

The Court does not find that Addington's grounds stated in support of the motion to vacate are adequate for requesting relief under C.C.P. §473(d). Addington does not state any clerical error made, but rather disagrees with the substance of the Court's Judgment entered. The purpose of C.C.P. section 473(d) is not to make changes retroactively to how a judgment was rendered, but to correct errors in recording said judgments. Furthermore, the Court is not persuaded by Addington's arguments regarding personal liability, which were already addressed by the Court in considering the motion for new trial. The motion appears to be yet another method by which Addington is attempting to challenge the Court's Judgment that was not favorable towards him after his motion for new trial and three appeals were all denied.

For the above reasons, Addington's motion is denied in its entirety.

V. CONCLUSION

Addington's motion to vacate is **DENIED**. Cross-Complainants shall submit a written order on this motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-264962, Stalcup v. Herrera, Jr.

Both Plaintiff John Stalcup and Defendant Dan Herrera III jointly move for the Court to: (1) set aside the Order After Trial entered on March 25, 2025, and the Order Granting Plaintiff John Stalcup's Motion for Attorneys' Fees, against Defendant Herrera III; and (2) enter corrected orders on each, nunc pro tunc, reflecting that judgment award of attorneys' fees shall be entered only against Defendant Dan Herrera, Jr. and not Dan Herrera III, per the parties' settlement agreement and to remedy the attorneys' respective surprise and mistake resulting from the inclusion of Defendant Dan Herrera III in the Court's orders.

The joint motion is **GRANTED** vacating the prior incorrect orders. The Court will sign the three proposed orders jointly lodged by the parties to correct the errors described in detail below.

I. PROCEDURAL HISTORY

Plaintiff Stalcup was a victim of the *Tubbs* fire and hired Defendants to construct an Accessory Dwelling Unit on Plaintiff's property. (Motion, 2:24-28; 3:1-9.) Plaintiff did not know that Defendants were unlicensed contractors, but after discovering that Defendants were unlicensed, Plaintiff terminated Defendants and filed this action. (*Ibid*.) The First Amended Complaint ("FAC") alleged breach of contract, violation of Business & Professions Code section 7031, and promissory fraud. (See FAC, ¶¶ 20-40.)

Plaintiff and Defendant Herrera III entered into a Settlement Agreement and Release on October 13, 2021, by which Defendant Herrera III was discharged from any and all claims related to this action and he was dismissed from this action pursuant to the Settlement Agreement. (Weaver Decl., Ex. A; Motion, 3:18-24.)

After trial in this matter, the Court entered an Order After Trial on March 25, 2025, which erroneously included Defendant Herrera III in the judgment because Plaintiff's counsel failed to inadvertently reiterate at trial that Defendant Herrera III had settled and been dismissed and the Court's Order should reflect that. (Motion, 4:2-10.) Furthermore, Plaintiff's motion seeking an award of attorney's fees also mistakenly included Defendant Herrera III, and the Court's order granting the fees motion also erroneously referred Defendant Herrera III. (*Id*. at 4:11-23.)

Realizing these errors, the parties now seek jointly to set aside those orders containing errors and for the Court to issue new proposed orders as lodged with the motion. There was no opposition or objection filed to the motion.

II. ANALYSIS

Legal Standard

Relief from Judgment

A court may relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect, but an application for this relief shall be accompanied by "a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (C.C.P. § 473(b).) Although a statement of reasons would be helpful, and may sometimes be relevant to prove the causal link

between an attorney's conduct and the default, default judgment, or dismissal, a statement of reasons is not required. (*Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 435.) In determining whether the mistake or inadvertence was excusable, the court considers whether a reasonably prudent person under the same or similar circumstances might have made the same error. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258.)

Clerical Error

As C.C.P. §473(d) provides in relevant part, the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) In other words, "the court can only make the record show that something was actually done at a previous time; a nunc pro tunc order cannot declare that something was done which was not done." (*Johnson & Johnson v. Sup. Ct.* (1985) 38 Cal.3d 243, 256.) The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117-18.)

Joint Motion to Set Aside

The parties jointly move to set aside the March 25, 2025, Order After Trial and the March 12, 2025, Order granting attorneys' fees due to these erroneously including Defendant Herrera III who had settled with Plaintiff and been previously dismissed from this matter. (Motion, pp. 5-7) They argue that no prejudice will result from this and this will not substantively change the order of the Court apart from removing a dismissed party whose name should not have been included in the orders at all and who did not partake in trial. (*Ibid*.) They also filed the motion within the deadline allowed per C.C.P. section 473(b).

Application

The Court, finding that no prejudice will result from granting this joint motion by the parties and that it will be in the interests of justice to correct the error of a dismissed and settled party being included in the two orders described above, will grant the motion in its entirety and sign the two corrected proposed orders and the proposed order regarding this motion that were lodged with the Court.

III. CONCLUSION

The joint motion is **GRANTED** vacating the prior incorrect orders and issuing the corrected proposed orders. The Court will sign the three proposed orders jointly lodged by the parties to correct the errors described in detail above.