TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, November 6, 2026, 3:00 p.m.
Courtroom 16 – Hon. Bradford DeMeo for Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.

Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV02971, Maverick Excavating, Inc. v. Dalk

Plaintiffs/Cross-Defendants Maverick Excavating, Inc. ("Maverick"), Herring & Son Construction, Inc. ("HSCI"), Vincent Herring ("Vincent"), and Tiffanie Herring ("Tiffanie") (together as "Cross-Defendants") demur to Defendant/Cross-Complainant Jason Dalk's ("Dalk") First Amended Cross-Complaint ("FACC"). The demurrer is **SUSTAINED with leave to amend** as to the First, Second, Third, Fifth, and Sixth Causes of Action pursuant to C.C.P. section 430.10(f). The demurrer is **OVERRULED** as to the Fourth Cause of Action. Dalk's request for judicial notice is **GRANTED** subject to the limitation explained below.

Dalk shall file any amendment no later than 15 days after notice of entry of an order on this motion.

I. Factual & Procedural History

This action arises from the foreclosure of a mechanic's lien and alleged nonpayment for construction services rendered. On September 29, 2025, Dalk filed his Cross-Complaint asserting six causes of action against Cross-Defendants for wage and hours claims under Labor Code section 200 et seq., fraud and constructive fraud, promissory estoppel, wage fraud and constructive fraud, retaliation, wrongful termination in violation of public policy, and breach of contract. On July 15, 2026, the Court heard both Vincent and Tiffanie's demurrer to the Cross-Complaint and Dalk's

motion for leave to file the FACC. The Court ultimately sustained Vincent and Tiffanie's demurrer with leave to amend. On July 20, 2026, Dalk filed his FACC asserting seven causes of action against Cross-Defendants for wage and hours claims under Labor Code section 200 et seq., fraud, constructive fraud, promissory estoppel, retaliation, wrongful termination in violation of public policy, and breach of contract. Cross-Defendants Maverick, HSCI, Vincent, and Tiffanie then demurred to the entire FACC. On September 30, 2026, the Court continued the matter to November 6, 2026, to allow Dalk to file a substantive opposition. Cross-Defendants did not file a reply.

II. Standard at Demurrer and Leave to Amend

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) A party may demur to a pleading when there is another action pending between the same parties on the same cause of action. (C.C.P. § 430.10(c).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

III. Discussion

A. Dalk's Request for Judicial Notice

In support of his opposition, Dalk requests judicial notice of portions of three documents: Declaration of Vincent Herring in Support of the C.C.P. section 128.7 motion filed on December 10, 2025, Declaration of Tiffanie Herring in Support of the C.C.P. section 128.7 motion filed on December 10, 2025, and portions of Plaintiffs' Second-Amended Complaint.

The request is **GRANTED** but the Court does not take notice of the truth of hearsay statements in these documents. (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452(d), 453.)

B. Demurrer

1. Alleged Contradictions

Cross-Defendants argue that the FACC is materially inconsistent with the original Cross-Complaint. Cross-Defendants challenge the allegations in paragraphs 8, 10, paragraph 13 of the FACC.

Dalk argues that the changes in the allegations are not inconsistences, but are adding further detail to the allegations, specifically supporting his fraud claim that requires heightened pleading.

The Court does not find the additions cited by Cross-Defendants to be materially inconsistent. The FACC amended dates from "sometime before April of 2023" to "sometime in or around beginning of 2022" and from "at the close of 2022 and into the beginning of 2023" to "in or around June of 2022." The FACC also amended allegations surrounding the employment offer to include Tiffanie when she was not previously named. Cross-Defendants ask the Court to exercise its discretion to disregard these inconsistent paragraphs, but the Court does not find the amended allegations to be materially inconsistent. The dates are changed by a matter of months and statutes of limitations or other timing issues are not raised in the demurrer. Paragraph 13 of the FACC clarifies who was present when certain conversations were had when a written employment offer was presented. The Court considers all paragraphs of the FACC.

2. Uncertainty

Cross-Defendants argue that the Second, Third, Fourth, and Fifth Causes of Action are uncertain and the "joint-employer" language joining Maverick to the First, Fifth, and Seventh Causes of Action are uncertain.

Demurrers for uncertainty are disfavored and only granted "if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292 [internal citation omitted].) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 [citations omitted].) Here, the FACC is not so incomprehensible that Cross-Defendants cannot reasonably respond. The arguments Cross-Defendants advance in support of this contention concerning the Second, Third Fourth, and Fifth Causes of Action are more akin to failure to state a cause of action rather than uncertainty, which the Court addresses below. Cross-Defendants also challenge Dalk's language used in the First, Fifth, and Seventh Causes of Action to implicate Maverick: "(and MAVERICK EXCAVATING to the has claimed it was MR. DALK's joint-employer and/or involved itself in non-payment of MR. DALKS's wages and other Labor Code violations [or wages, benefits, and reimbursable expenses])". (FACC ¶¶ 31, 58, 67.) Again, Cross-Defendants' arguments are more akin to failure to state a cause of action rather than uncertainty. The demurrer based on uncertainty is **OVERRULED**. Cross-Defendants have demurred separately to six of seven causes of action, which the Court considers below.

3. Separate Causes of Action

i. First Cause of Action – Wage and Hour Claims – Against All Cross-Defendants

Cross-Defendants argue that the First Cause of Action fails against individual Cross-Defendants Vincent and Tiffanie because the FACC does not allege that either violated or caused to be violated any wage provision, including that Vincent and Tiffanie set Dalk's pay rate, classified his employment, decided not to issue pay stubs, decided not to pay overtime, or make any decision giving rise to the alleged violations. Cross-Defendants contend that ownership and management duties do not, alone, make a person a managing agent under Section 558.1 and that the allegation that HSCI and Maverick were alter-egos of one another are also insufficient.

Dalk relies on the plain language of the statute and argues that he has sufficiently alleged that Vincent was the owner of Maverick and the partial owner of both Maverick and HSCI and that Tiffanie was the office manager and an officer of both Maverick and HSCI. (FACC, ¶¶ 4–5.)

Labor Code section 558.1 states that an employer or other person acting on behalf of an employer, including an owner, director, officer, or managing agent of the employer, who violates or causes to be violated a provision regulating minimum wages or hours or various other sections of the Labor Code may be held liable as the employer for such violation. To cause a violation of the Labor Code, "an individual must have engaged in some affirmative action beyond his status an owner, officer or director the of the corporation", and to be held personally liable, he "must have had some oversight of the company's operations or some influence on corporate policy that resulted in Labor Code violations." (*Espinoza v. Hepta Run, Inc.* (2022) 74 Cal.App.5th 44, 59.)

Here, the FACC does not allege any affirmative action Vincent and Tiffanie took to violate an applicable section of the Labor Code. Footnote 7 on page 12 of the Opposition states that Tiffanie admits to being Chief Financial Officer of Maverick and HSCI "who presumptively would have been responsible for failing to provide Mr. Dalk his paystubs and concealing wage theft and diversion of funds." Such presumptions are insufficient. Without any allegation of Vincent and Tiffanie's affirmative action(s) to violate or cause a violation of the Labor Code, they cannot be held personally liable solely as being owners of HSCI and/or Maverick. Therefore, the demurrer to the First Cause of Action is **SUSTAINED** as to Vincent and Tiffanie as individuals for failure to state a cause of action pursuant to C.C.P. section 430.10(f).

ii. Second Cause of Action – Fraud – Against HSCI, Vincent, and Tiffanie

Cross-Defendants argue that the fraud allegation lacks the required specificity and does not specify who spoke, in what capacity, on what date, or where concerning paragraph 36 of the FACC. They further contend that the sole conspiracy statement implicating Tiffanie is insufficient. Cross-Defendants next argue that this cause of action is barred by the economic loss rule.

Dalk argues that his fraud claims are predicated on the promise of a 50/50 bonus or partnership split as to Cross-Defendants and/or unpaid employment benefits and that Cross-Defendants knew of the promise of a 50/50 partnership which they repudiated. Dalk argues that there are multiple exceptions to the economic loss rule that are plead throughout the Complaint that were plead as his Second through Fourth Causes of Action.

The general elements of fraud are "misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages." (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) "To withstand demurrer, facts constituting every element of fraud must be alleged with particularity." (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

Here, the Second Cause of Action is not pled with adequate specificity. For example, the FACC states that HSCI and Vincent repeatedly represented to Dalk that the profit split between HSCI and Dalk were 50/50 and that HSCI, Vincent, and Tiffanie represented that he was an exempt employee.

(FACC, ¶¶ 36–37.) However, the alleged misrepresentations fail to plead what each Cross-Defendant represented to Dalk, how, and when, including the specific instances of multiple misrepresentations as he has pled that these representations were repeated. The knowledge of falsity is also plead in a conclusory manner lacking specificity. (FACC, ¶¶ 38–39.) Dalk did not plead an intent to induce reliance for this cause of action or in a preceding paragraph incorporated therein. Paragraph 53 states in a conclusory manner that Cross-Defendants intended Dalk to rely upon the 50/50 split promise, but this paragraph is not incorporated into the Second Cause of Action. Regarding the conspiracy allegation against Tiffanie, Cross-Defendants' cited statement does not appear at paragraph 36 of the FACC, in any paragraph in the Second Cause of Action, nor is it incorporated by reference into the Second Cause of Action.

In *Robinson*, the California Supreme Court held that the trial court erred in applying the economic loss rule to plaintiff's intentional tort claims, including intentional misrepresentation and fraud in the performance of a contract. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 986–994.) The California Supreme Court in *Rattagan* clarified *Robinson* and held that claims for fraud "based on conduct committed during the course of a contractual relationship fall outside the economic loss doctrine." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 44.) Cross-Defendants contend that Dalk's failure to plead a contractual relationship outside the employment relationship is fatal. However, Cross-Defendants' cited authority does not support this contention. Nothing in *Rattagan* suggests that the contractual relationship must be a fiduciary relationship. As contemplated by the court in *Rattagan*, "the analysis focuses on whether the plaintiff can establish the elements of the cause of action independently of the parties' contractual rights and obligations." (*Rattagan, supra,* 17 Cal.5th at 44; see also *Robinson Helicopter Co., Inc. supra,* 34 Cal.4th at 993 ["A party to a contract cannot rationally calculate the possibility that the other party will deliberately misrepresent terms critical to that contract. [Citations] No rational party would enter into a contract anticipating that they are or will be lied to."].) Thus, the economic loss rule does not bar Dalk's fraud cause of action. However, Dalk does not plead fraud with the adequate specificity required. The demurrer to the Second Cause of Action is **SUSTAINED** as to HSCI, Vincent, and Tiffanie for failure to state a cause of action pursuant to C.C.P. section 430.10(f).

iii. Third Cause of Action – Constructive Fraud – Against All Cross-Defendants

Cross-Defendants argue that the Third Cause of Action fails against Maverick because it was never named in the fraud cause of action of the original Cross-Complaint and there are no facts to support Maverick's inclusion. Cross-Defendants further argue that the employment relationship alleged does not create a fiduciary relationship, alone, and the alleged partnership fails because the allegations in the FACC confirm that no partnership was formed. Cross-Defendants assert that the allegations lack the specificity required for fraud claims and are generally barred by the economic loss rule.

In response, Dalk states that he has adequately pled all elements of constructive fraud. He argues that there are standalone fraudulent acts (failing to provide Dalk copies of his paystubs and account for and disclose the wages and benefits he was earning) that are an exception to the economic loss rule under *Robinson*.

The elements of constructive fraud are "(1) a fiduciary or confidential relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive, and (4) reliance and resulting injury (causation)"].) " ' "In its generic sense, constructive fraud comprises all acts, omissions and

concealments involving a breach of legal or equitable duty, trust, or confidence, and resulting in damages to another…[Citation.]' " (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1131 quoting *Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 516, fn. 14; see also Civ. Code § 1573 and CACI No. 4111.) "Constructive fraud exists in cases in which conduct, although not actually fraudulent, ought to be so treated—that is, in which such conduct is a constructive or quasi fraud, having all the actual consequences and all the legal effects of actual fraud." (*Prakashpalan, supra,* 223 Cal.App.4th at 1131 [citations omitted].) "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party." (*Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 960 [citations omitted].) A nonfiduciary confidential relationship "exists between two persons when one has gained the confidence of the other and purports to act or advise with the other's interest in mind [without fiduciary relation]." (*Tyler v. Children's Home Society* (1994) 29 Cal.App.4th 511, 549 [citation omitted].) Constructive fraud must be pled with specificity like an action for fraud. (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1250.)

Here, constructive fraud requires Dalk to plead a fiduciary or confidential relationship, which he has failed to do. An employment agreement alone does not create a confidential relationship or a fiduciary relationship. For an employment agreement to create a confidential relationship, there must be additional ties showing one has gained the confidence of the other and purports to act or advise with the other's interest in mind." (*Tyler, supra,* 29 Cal.App.4th at 549; see also *Odorizzi v. Bloomfield School Dist.* (1966) 246 Cal.App.2d 123, 129.) For an employment agreement to create a fiduciary relationship, the person charged with a fiduciary obligation must either "knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law." (*Brown, supra,* 168 Cal.App.4th at 960 [citations omitted].) Dalk has failed to plead facts indicating any vulnerability outside an employer–employee relationship that would give rise to a fiduciary or confidential relationship with any Cross-Defendant. While the FACC mentions a possible partnership between Dalk and HSCI and/or Vincent, this requires pleading that HSCI and Dalk carried on as co-owners a business for profit, whether or not they intend to form a partnership. (*Jones v. Goodman* (2020) 57 Cal.App.5th 521, 531 quoting Corp. Code § 16202(a).) Again, such allegations plead with adequate specificity are not present in the FACC.

Furthermore, the FACC fails to address what each Cross-Defendant did not disclose to Dalk, how, and when, including the specific instances of multiple misrepresentations as he has pled that these representations are repeated. (FACC, ¶¶ 44–45.) The intent to deceive and reliance are also plead in a conclusory manner, lacking specificity. (FACC, ¶¶ 44–50.) The FACC does not adequately address Maverick's involvement, let alone at the heightened level of specificity required. (FACC, ¶ 47.)

As discussed above, the economic loss rule does not outright bar Dalk's constructive fraud cause of action. However, Dalk neither pleads a fiduciary or confidential relationship nor the other elements with the required specificity. The demurrer to the Third Cause of Action is **SUSTAINED** as to all Cross-Defendants for failure to state a cause of action pursuant to C.C.P. section 430.10(f).

iv. Fourth Cause of Action – Promissory Estoppel – Against HSCI, Vincent, and Tiffanie

Cross-Defendants argue that the arrangement pled is not a clear and unambiguous promise, but rather an "informal gentlemen's agreement", causing this claim to fail against HSCI and individual Cross-Defendants Vincent and Tiffanie.

Dalk states that there are two sets of contractual promises at issue: (1) a written contract with specific benefit terms and an additional oral contract or promise of a 50/50 profit split (Exhibit A to the FACC) and (2) a written contract where everything is specified in writing, including but not limited to the 50/50 profit split (Exhibit B of the FACC). Dalk contends that these Exhibits show a specific promise.

The elements of promissory estoppel are (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages "measured by the extent of the obligation assumed and not performed." (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 780 [citations omitted].)

Here, Exhibits A shows that on April 23, 2023, Jason Dalk signed an employment agreement with HSCI, that he admittedly drafted himself, where profit sharing specifications were "T.B.D." Exhibit B shows a draft agreement Dalk prepared specifying that HSCI agrees to pay 50% of all related profits to Dalk upon completion of project steps and contains other defining criteria related to the agreement. Exhibit B was never executed, but "[a]s far as Mr. Dalk could tell, cross-defendants endorsed and ratified that agreement." (FACC, ¶ 19.) The FACC alleges that Cross-Defendants knowingly made their letterhead, digital signature, and forms available so that he may use them in bidding jobs and prepare other legally enforceable agreements. (FACC, ¶ 13.) The FACC further states that the parties discussed the 50/50 split on or around April 23, 2023, at Cross-Defendants' home and headquarters to which there was "no objection to and apparent agreement on all terms." (*Ibid.*) In the next paragraph, Dalk alleges that he "again specifically discussed a 50-50 profit split with Vince at their home on April 23, 2023, and he agreed in Tiffanie's presence." (FACC, ¶ 14.) Vincent is alleged to be an owner, director, and officer of Maverick and HSCI while Tiffanie is alleged to be the office manager and an officer of HSCI and Maverick. (FACC, ¶¶ 5–6.) Dalk also frames the agreement as a "gentleman's agreement" because he deferred committing the details of the profit split in writing. (FACC, ¶ 16.) Based on the foregoing, the FACC sufficiently alleges a clear promise of a 50/50 profit split. (Cf. *Moncada, supra,* 221 Cal.App.4th at 780 [employer's oral promise of bonuses of an amount sufficient to retire upon the company's sale if employees remained at the company was sufficiently clear and definite].) The demurrer to the Fourth Cause of Action is **OVERRULED**.

Additionally, the Court notes that Cross-Defendants rely on the heightened standard for pleading promissory fraud (a distinct kind of fraud), but the Fourth Cause of Action is pled as promissory estoppel, not promissory fraud.

v. Fifth Cause of Action – Statutory Retaliation – Against HSCI and Maverick

Cross-Defendants contend that the Fifth Cause of Action fails because the FACC does not allege any fact connecting any complaint to the termination decision. Cross-Defendants argue that this cause of action should be dismissed as to HSCI and as to Maverick to whatever extent it is later found to be a joint employer, with leave to amend limited to specific facts identifying the protected activity relied upon and connecting it to the termination decision.

Dalk argues that the FACC details complaints Dalk made in November 2023, "which raise a presumption that Mr. Dalk was terminated in retaliation for his complaints" based upon sections 98.6 and 1102.5 of the Labor Code.

To establish a prima facie case of retaliation under Section 1102.5, California courts generally require a plaintiff to show that he engaged in protected activity, that he was subject to adverse employment action by his employer, and there was a causal link between the protected activity and the adverse employment action. (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 710 [citations omitted].) To establish a prima facie violation of Section 98.6, plaintiff must show he engaged in protected activity, that he was subject to adverse employment action by his employer, and the protected activity substantially motivated the adverse employment action. (*Garcia-Brower v. Premier Automotive Imports of CA, LLC* (2020) 55 Cal.App.5th 961, 977.)

Here, the FACC alleges that Dalk complained to Herring about numerous Labor Code violations including non-delivery of pay stubs, non-payment of wages, overtime, sick time, vacation, medical stipends, and reimbursable expenses. (FACC, ¶ 58.) Employee complaints to their employer, including complaints about unpaid wages, are disclosures protected by the whistleblower retaliation statute. (*People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719, 729–731.) Similarly, Section 98.6 prohibits an employer from retaliating against an applicant or employee because the applicant or employee exercised "any rights" afforded him or her under the Labor Code, which includes unpaid wages, overtime, sick time, etc. Therefore, the protected activity has been adequately pled. The alleged adverse employment action is Dalk's November 27, 2023, termination. (FACC, ¶¶ 22, 24–26.) However, Dalk does not adequately plead a causal link between the protected activity (his complaints) and the adverse employment action (his termination). The FACC states in a conclusory manner that his complaints proximately caused HSCI and Maverick to terminate and otherwise retaliate against Dalk, which is insufficient. (FACC, ¶ 59.) The demurrer to the Fifth Cause of Action is **SUSTAINED** as to HSCI and Maverick for failure to state a cause of action pursuant to C.C.P. section 430.10(f).

vi. Sixth Cause of Action – Wrongful Termination in Violation of Public Policy – Against HSCI

Cross-Defendants argue that the Sixth Cause of Action fails for the same reasons as the Fifth Cause of Action: that there are no facts tying Dalk's termination to the complaints under Sections 98.6 or 1102.5(b).

To establish a claim for wrongful termination in violation of public policy, a plaintiff must plead (1) a termination or other adverse employment action; (2) the termination or other action was a violation of a fundamental public policy, as expressed in a constitutional, statutory, or regulatory provision; and (3) a nexus between the adverse action and the employee's protected status or activity. (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 660, overturned on other bases due to legislative action expanding conduct covered by Gov. Code § 1290.)

Here, Dalk pleads that he was terminated by HSCI on or around November 27, 2023. (FACC, ¶¶ 22, 24–26.) The FACC states that HSCI terminated Dalk's employment in violation of public policy, including Sections 98.6 and 1102.5(b). (FACC, ¶ 63.) However, Dalk does not plead any nexus between his termination and the alleged protected activity as required. The demurrer to the Sixth

Cause of Action is **SUSTAINED** as to HSCI for failure to state a cause of action pursuant to C.C.P. section 430.10(f).

vii. Prayer for Relief – Accounting and Constructive Trust

Lastly, Cross-Defendants challenge Dalk's requested relief for an accounting and imposition of a constructive trust on HSCI and Maverick because no fiduciary or trust relationship is adequately pled. However, the prayer to a complaint is not subject to a demurrer. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1562.) The demurrer as to the prayer for relief concerning accounting and the imposition of constructive trust is **OVERRULED**.

C. Leave to amend

The demurrer makes several statements about the Court's findings in the prior demurrer to the Cross-Complaint. However, the Court made no findings as to individual causes of action in the demurrer to the Cross-Complaint even though the demurrer to the FACC repeatedly references such findings. The Court finds that there is some reasonable possibility that Dalk may cure the defects above through amendment. (*The Swahn Group, Inc., supra,* 183 Cal.App.4th at 852.) The Court declines to adopt the limited leave to amend requested by Cross-Defendants.

IV. Conclusion

The demurrer to the FACC is **SUSTAINED** with leave to amend as to the First, Second, Third, Fifth, and Sixth Causes of Action pursuant to C.C.P. section 430.10(f). The demurrer is **OVERRULED** as to the Fourth Cause of Action.

Dalk shall file any amendment no later than 15 days after notice of entry of an order on this motion.

Cross-Defendants 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).

2. 24CV06845, Bissell v. Cohen

Cross-Defendant Dana Gillespie moves to set aside the default the entered against her on March 25, 2026, pursuant to C.C.P. section 473(b). The motion is **DENIED without prejudice**. This motion was first heard on September 30, 2026, where the Court noted several procedural deficiencies in the motion, including the notice of motion and motion lacking Gillespie's signature. (See Minute Orders, dated September 30, 2026, and served October 12, 2026.) The Court continued the hearing to allow Gillespie to correct such deficiencies, but she has not filed anything further to date. Accordingly, the motion to set aside the March 25, 2026, default is denied without prejudice. Furthermore, the Court **STRIKES** Gillespie's notice of motion and motion filed on April 16, 2026, pursuant to C.C.P. section 128.7(a) [unsigned papers shall be stricken unless omission of the signature is promptly corrected after being called to the attention of the party].

The Minute Orders shall serve as the order of the Court. (C.C.P. § 1019.5.)

3. SCV-272389, Muelrath v. Langley

Defendant/Cross-Defendant Carolyn Langley as Trustee of the Carolyn Langley Revocable Trust ("Carolyn") and Defendant/Cross-Complainant Pete Langley as Trustee of the Langley 2022 Family Trust ("Pete") move the Court For an Order Requiring Partition Referee to Disclose Proposed Subdivision Costs and Funding Before Further Implementation. The motion is **DENIED**.

I. Factual & Procedural History

This action rises out of partition of a 22.92-acre parcel comprised of multiple family residences: 1350, 1356, 1464, 1466 and 1468 Middle Two Rock Road, Petaluma, California, 94952, A.P.N. 021-060-002 (the "Property"). The Property is divided among the following parties as tenants in common: Plaintiff Corinne Muelrath ("Corinne") with a 3/9 undivided interest, Pete (Corinne's brother) as Trustee of the Langley 2022 Family Trust) with a 3/9 undivided interest, Carolyn (Corinne's sister) as Trustee of the Carolyn Langley Revocable Trust dated October 18, 2022 with a 2/9 divided interest, and Defendant Timothy Lee Young ("Timothy") (son of Corinne's deceased sister, Linda Young) as Successor Trustee of the Linda Young Trust dated June 10, 2021 with a 1/9 undivided interest. (See Complaint, ¶¶ 2–3.)

On September 20, 2024, this Court held a court trial and took the matter under submission. On December 16, 2024, the Court ordered the appointment of a referee to make a report on the facts and circumstances that affect the determination of a partition in kind or by sale and make an advisory recommendation to the Court. The Court appointed Michael Pecherer as the Partition Referee (the "Referee") on January 15, 2025. On July 17, 2025, the Court entered an Interlocutory Judgment ordering the Property to be subdivided into five parcels to allow each party to retain their existing residence with the fifth parcel consisting of an unoccupied house (1350 Middle Two Rock Road) being sold to fund the costs and expenses of the subdivisions.

On June 2, 2026, the Referee moved the Court to approve the tentative map for partition of the Property and filed his Second Report in support of the motion, which included a Technical Summary prepared by GJ Harmina, Professional Land Surveyor. Carolyn and Pete filed objections to the Second Report and the motion to approve the map for partition. Corrine filed a lengthy brief in support of the Referee's map and report, with a request for modification of one boundary line. On August 19, 2026, Carolyn and Pete moved *ex parte* to stay and set aside the Referee's Second Report, to deny the motion to approve the tentative map, and for supplemental appraisal, which the Court denied the same day, noting that it would hear such arguments at the hearing the following day on August 20. On August 20, 2026, the Court heard argument from all parties and took the matter under submission. On September 11, 2026, the Court approved the tentative map and directed the Referee to move forward with the map to the Sonoma County Planning Department.

Subsequently, in late September, Carolyn and Pete filed three motions: (1) To Reconsider Request for Stay of the Court's September 11, 2026 Order, (2) For an Order Requiring Partition Referee to Disclose Proposed Subdivision Costs and Funding Before Further Implementation, and (3) To Set Aside or Modify the Interlocutory Order and For an Order of Sale. The Court notes that Carolyn and Pete filed these motions in propria persona but are now represented by counsel. On October 30, 2026, counsel withdrew the motion to reconsider and the motion to set aside. The Court now considers the sole remaining motion for an order requiring disclosure of costs.

II. Discussion

A. Order Requiring Partition Referee to Disclose Proposed Subdivision Costs and Funding Before Further Implementation

Carolyn and Pete, with the majority ownership interest in the Property (5/9), request the Court to order the Referee to disclose the anticipated total cost of implementing the proposed subdivision, including costs and fees already paid, with an itemized description. They argue that this information is necessary so the parties and the Court can understand the financial consequences of the proposed subdivision and so the Court can address disputed funding and reimbursement issues before the parties become further financially committed to the proposed course of action.

In response, Corinne filed a statement of advanced payments already made totaling $48,156.98 plus an estimated $80,000 cost for future surveys, engineering, County review, and final map implementation expenses.

"Upon the conclusion of the time for appeal, the interlocutory judgment becomes final and conclusive." (*Starcevic v. Pentech Financial Services, Inc.* (2021) 66 Cal.App.5th 365, 375–376.). The Interlocutory Judgment is final and a partition in kind is actively proceeding. The Interlocutory Judgment does not discuss the requirement of filing interim accounting as presently requested by Pete and Carolyn. The Court has discretion to require the Referee to file an interim accounting. (C.C.P. § 873.010(b)(5).)

Pete and Carolyn's arguments about the possibility of the insufficiency of funds are solely based on one estimate Pete received for the costs to repair the 1350 Property, which was obtained four days after the Court entered its September 11th Order approving the tentative map and is used primarily to challenge the Court's September 11th Order. As stated by the Referee in his response to the reconsideration motion, in entering the Interlocutory Judgment, the Court approved the Ward-Levy appraisal, which valued the 1350 Property in its condition at the time at $992,000. There is no other evidence that the repair costs of the 1350 Property would exceed the sale proceeds. Pete and Carolyn present no other facts that persuade the Court to order an interim accounting. The Court-appointed Referee is an officer of the Court and based on the facts above, the Court does not find it necessary to order the Referee to file an interim accounting. The Court finds that a final accounting of the Referee is sufficient.

On a final note, in his response to the motion to reconsider the interlocutory judgment, the Referee requests that the Court order that the fees incurred by the Referee in responding to Pete and Carolyn's motions should be borne by them pursuant to C.C.P. sections 874.040 and 874.010. The Court will consider any request for certain fees to be borne by a particular party at final approval of the Referee's costs.

III. Conclusion

The motion is **DENIED**. The Court will consider any request for certain fees to be borne by a particular party at final approval of the Referee's costs.

The Referee shall submit a written order on his motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).