

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 12, 2025, 3:00 p.m.
Courtroom 16 – 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?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**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. 24CV02810, Khazal v. Kilker

The motion of Davin R. Bacho to be relieved as counsel for Fred Khazal, as an individual and on behalf of Mitra Khazal; Estate of Mitra Khazal; Saleh Sheikh Khazaly aka Saleh Khazal; and Rebecca Khazal is **GRANTED**. The court will sign the proposed order.

2. 24CV02961, Metellus-McLemore v. County of Sonoma

This matter was on calendar on September 30, 2025, for a Case Management Conference. At the conclusion of the CMC hearing, this court continued the matter to this calendar for oral argument. **APPEARANCES REQUIRED.**

3. 24CV02971, Maverick Excavating, Inc. v. Dalk

I. Demurrer
Defendant Jason Dalk (“Defendant” or “Dalk”) demurs to the third cause of action for fraud, the fourth cause of action for fraud – conspiracy, sixth cause of action for interference with prospective economic advantage, and seventh cause of action for interference with contractual relations alleged in the second amended complaint (“SAC”) filed by Plaintiffs. **The demurrer is OVERRULED.**
a. Second Amended Complaint

On May 1, 2025, Maverick Excavating, Inc. (“Maverick”) and Herring & Son Construction, Inc (“Herring”)(together “Plaintiffs”) filed their SAC alleging causes of action for: (1) Foreclosure of Mechanics Lien; (2) Breach of Contract; (3) Fraud; (4) Conspiracy to Commit Fraud; (5) Breach of the Covenant of Good Faith and Fair Dealing; (6) Interference with Prospective Economic Advantage; and (7) Interference with Contracts.

Maverick is a licensed Engineering Contractor. (SAC ¶5.) Herring is a licensed general contractor. (SAC ¶7.) Plaintiffs’ SAC alleges defendant Mustang Court Community LLC (“MCC” or “Mustang”) refused to pay Plaintiffs for construction services. Defendant Dalk is alleged to have been employed by Maverick for 9 weeks and by Herring for 16 weeks. (SAC, ¶19.) Prior to his employment with Plaintiffs, Dalk is alleged to have worked on the subject project, located on property owned by MCC at 906 Mustang Court in Petaluma, as an employee of general contractor Strategic Industry. (SAC, ¶¶10, 19.) The project was aimed at preparing the property for independent living by disabled individuals to live in a congregate residential setting. (SAC, ¶11.)

While employed with Herring, Dalk is alleged to have made false time entries. (SAC, ¶41, 47.) Dalk allegedly accepted payment and marked jobs as complete when they were not completed. (SAC, ¶42.) Despite this, Dalk was warned but was given a second chance. (SAC, ¶43.) Thereafter, during a time when Herring was preparing an estimate for an ADU, Dalk was overheard suggesting to the MCC Chair that MCC should find a different contractor for the ADU. (SAC, ¶45.) Herring later fired Dalk due to his alleged underperformance and poor attitude. (SAC, ¶47.)

Plaintiffs allege that after Herring fired Dalk, Dalk vandalized Herring’s property and began a campaign to get MCC to terminate its contract with Herring, to get MCC to not pay Herring, and to have himself take over Plaintiffs’ contracts with MCC. (SAC, ¶¶48-51) Allegedly as a result of this campaign, MCC terminated its contracts with Plaintiffs stating that Plaintiffs’ work was not up to industry standards and because Herring had fired Dalk. (SAC, ¶¶54-59.) Plaintiffs allege the termination was without cause and that thousands of dollars of work remained on their contracts with MCC. (SAC, ¶¶60-66.) Subsequent to terminating its contracts with Plaintiffs, MCC hired Dalk as its construction manager. (SAC, ¶77.)

Plaintiffs allege that MCC did not pay their outstanding bills nor did MCC agree to have a neutral third-party evaluate Plaintiffs’ work to determine the work quality. (FAC, ¶¶62-66.) Plaintiffs allege when Dalk was debarred he was informed that it was illegal to work independently as a contractor. (SAC, ¶80.) Despite being provided with invoices, MCC has not paid the bills. (SAC, ¶¶81-83.) The dispute has not been evaluated by an independent contractor nor have Plaintiffs been give a chance to correct any bona fide defect. (SAC, ¶¶84-87.)

After mechanic’s liens were filed and Plaintiffs attempted to obtain payment, they allege MCC presented them with a fake bill, created by Dalk, for services to correct their work. (SAC, ¶¶100-117.)

b. Amendments without leave to amend

Dalk argues that Plaintiffs have made certain amendments to causes of action without leave of court. This issue is discussed in Dalk’s motion to strike below.

c. Incorporated Arguments

Dalk states that he incorporates arguments made in his other motions to strike. Those arguments will be dealt with when those motions are heard.

d. Fraud

The cause of action for fraud is based upon Dalk’s allegedly deceptive and fraudulent billing practices where he is alleged to have billed in such a way to obtain money owed to Herring, and his creation of a fake document to support MCC’s position that it did not owe Plaintiffs for work performed.

Dalk argues that the fraud allegations are amorphous and lack the required specificity and necessary allegations. These are the same arguments as in his prior demurrer to this cause of action—which was overruled. The SAC also contains sufficient allegations.

The elements of the tort of fraud are: (1) misrepresentation, (2) knowledge of the statements' falsity, (3) intent to defraud (i.e., to induce reliance on the misrepresentation), (4) justifiable reliance, and (5) resulting damage. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974). Fraud must be pleaded with particularity and by facts that show how, when, where, to whom, and by what means the representations were tendered. (*Charnary v. Cobert* (2006) 145 Cal.App.4th 170, 185 fn. 14; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.)

Here, Plaintiffs have alleged a misrepresentation: that Dalk stated in billing and/or timesheet entries that he had performed work when he had not and/or billed more than one entity for work performed. In addition, he is alleged to have misrepresented that money had been paid to a third party to correct errors made by Plaintiffs. These are alleged to have been intentional misrepresentations in order for Dalk to benefit financially which caused Plaintiffs to either pay money that was not earned or to lose money since Dalk directed it to himself. These allegations sufficiently cover the elements of a cause of action for fraud.

In addition, the allegations are sufficiently specific. Every evidentiary fact which might eventually support a cause of action does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Here, Plaintiffs allege who—Dalk; they allege when—during the subject construction project while Dalk was employed by Herring; they allege what—misrepresentation of work performed. They allege how or by what means—by way of timesheets and billing entries. Plaintiffs' reliance is alleged in that Dalk was their employee who was hired to manage the subject project—not to redirect money to his own pocket. Herring was damaged because it paid Dalk for work that was not performed.

The demurrer to Plaintiff's fourth cause of action for fraud is, again, OVERRULED.

e. Fourth Cause of Action – Conspiracy to Commit Fraud

Based upon this court's order on Dalk's motion to strike, the demurrer to this cause of action is MOOT.

f. Sixth Cause of Action – Interference with Prospective Economic Relations;
Seventh Cause of Action – Interference with Contractual Relationship

The causes of action for interference with prospective economic advantage and for interference with contractual relations are based upon the allegations that Dalk made false accusations to MCC that Plaintiffs' work was not up to industry standards, his alleged lobbying MCC to terminate its contracts with Plaintiffs, and his alleged takeover of work covered by Plaintiffs' contracts with MCC.

Dalk makes the same arguments as he did on his demurrer to the FAC—which was overruled. He argues that these causes of action fail because corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract. In other words, agents cannot be liable for conspiring with their own principals. Dalk argues at the time he is alleged to have induced a breach of the Plaintiffs' contracts with Mustang, he was Mustang's employee and was in a confidential relationship with Ms. Riggle, Mustang's principal.

The inducement of a breach of contract by an agent must be justifiable and by legitimate means. (*Lawless v. Brotherhood of Painters, Decorators and Paperhangers of America* (1956) 143 Cal.App.2d 474, 478.) The actions are privileged only where the inducement was ancillary to the exercise of peaceful and otherwise lawful methods of obtaining a legitimate objective. (*Ibid.*) The

“agent's immunity rule” does not apply when the agents are acting “as individuals for their individual advantage.” (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1605.)

Here, Plaintiffs allege that Dalk falsely claimed that their work was below industry standards in order to obtain that work for himself, which is sufficient to allege a cause of action for interference with economic advantage. In addition, the SAC alleges that Plaintiffs were in a relationship with MCC, having completed two contracts and working on four others. Prospectively, Plaintiffs were anticipating working on another project creating the ADU. Plaintiffs allege Dalk disrupted the relationship such that Plaintiffs did not obtain this contract and that Dalk was paid for work Plaintiffs performed on other contracts. The allegations do not support finding that Dalk was acting in the best interests of Mustang as his principal. Therefore, they sufficiently allege intentional interference with prospective economic advantage and with contractual relations. The demurrers to these causes of action are **OVERRULED**.

g. Conclusion and Order

Dalk's demurrer to the third cause of action for fraud, sixth cause of action for interference with prospective economic advantage, and seventh cause of action for interference with contractual relations is **OVERRULED**. The demurrer to the fourth cause of action for fraud – conspiracy is **MOOT**.

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

II. Motion to Strike

Defendant Jason Dalk (“Dalk”) also moves to strike the following paragraphs of the Second Amended Complaint (“SAC”): Paragraphs 40, 44, 50-52, 72, 79, 80, 152, 153, and 173 through 183 as having been filed without leave to amend. Dalk moves to strike paragraphs 40, 47-118, 152, 153, 157-167, 173-184, 199, and 212 on substantive grounds, as discussed below. **Dalk's motion to strike paragraphs 40, 44, 50-52, 117, 118, 152, 153, 159-167, and 173 through 184 is GRANTED. The motion as to paragraphs 48, 49, 53-116, 157, 158, and 167, 199, and 212 is DENIED.**

a. Amendments without leave to amend

Dalk argues that Plaintiffs have made certain amendments to causes of action without leave of court. These are paragraphs 40, 44, 50-52, 72, 79, 80, 152, 153, and 173 through 183.

This court overruled Dalk's prior demurrer to the fourth cause of action for fraud and the sixth cause of action for interference with prospective economic advantage in Plaintiff's first amended complaint (“FAC”). The demurrer by defendant Mustang Court Community, LLC (“MCC” or “Mustang”) to Plaintiffs' first cause of action for foreclosure on a mechanic's lien, third cause of action for unjust enrichment, and fourth cause of action for fraud were sustained with leave to amend.

Paragraphs 40, 44, 50-52, 72, 79, and 80 were amended from the FAC to the SAC. These allegations are part of Plaintiffs' “general allegations” that are incorporated into their causes of action. The court's order allowing leave to amend specific causes of action against Mustang did not give Plaintiffs leave to amend whatever allegations they wanted, including the general allegations. Therefore, Dalk's motion to strike paragraphs 40, 44, 50-52, 72, 79, and 80 is **GRANTED**.

Paragraphs 152 and 153 are part of Plaintiffs' third cause of action for fraud against Dalk. This court's order overruled Dalk's demurrer to this cause of action. Plaintiffs were not granted leave to amend. Therefore, Dalk's motion to strike paragraphs 152 and 153 is **GRANTED**.

Paragraphs 173 through 183 are new to the SAC. They are part of a new cause of action for conspiracy. Plaintiffs were not given leave to allege a new cause of action. Accordingly, the motion to strike Plaintiffs' fourth cause of action for conspiracy is **GRANTED**.

b. Conduct Occurring After Reliance

Dalk argues that allegations of an intent to present further supposedly fraudulent time sheets or an employment contract fails to allege reliance and causation, citing paragraphs 152 and 153.

Paragraph 152 states: “Plaintiffs claim that Defendant DALK intends to present further falsified timesheets in an effort to be paid even more through this lawsuit, and or state agency complaints.”

Paragraph 153 states: “Plaintiffs claim that Defendant DALK intends to present the forged “employment letter” to establish further claims for benefits, despite no agreement for such.”

These allegations form part of Plaintiffs’ cause of action for fraud against Dalk. These paragraphs were stricken above for Plaintiffs’ failure to obtain leave of court. However, Dalk is also correct that there is no reliance or causation alleged with respect to these allegations as Dalk is not alleged to have carried through with these actions to Plaintiffs’ detriment.

c. Settlement Communications

Dalk argues that paragraphs 103 through 118, 157 through 167, and 173 through 184 fail to allege reliance as they were part of the parties’ settlement negotiations and the parties did not settle. These paragraphs are part of the section of the SAC labeled “Meet and Confer.” This section describes the parties’ meeting on April 5, 2024 to attempt to resolve their disputes with respect to Maverick’s Contract D pertaining to irrigation ditches.

1. Paragraphs 100-117

Paragraph 100 through 117 pertain to the Mustang’s counsel’s estimate of necessary corrections to the trenching work. Plaintiffs allege Mustang’s counsel presented the estimate as a fake invoice. These allegations do not support any of Plaintiffs’ causes of action. While they are presented apparently in support of Plaintiffs’ cause of action for fraud, the SAC does not allege any reliance thereon or subsequent damages. Therefore, the motion to strike these allegations is GRANTED.

2. Paragraph 118

Paragraph 118 states that Defendants’ counsel suggested mediation after the failure of the parties’ settlement negotiations. This allegation is irrelevant to Plaintiffs’ causes of action. The motion to strike this paragraph is GRANTED.

3. Paragraphs 157 through 167

Paragraphs 157 through 167 are part of Plaintiffs’ third cause of action for fraud against Dalk.

Paragraph 157 of the SAC was paragraph 121 of the FAC. It states: “On April 5, 2024, a full four months after the improper termination of Contractor, Plaintiff Maverick and Defendant MCC, met to confer about the unpaid billing on Contract D – for irrigation trenches in the amount of \$33,987.50.”

Paragraph 158 does not appear in the FAC. It states: “Defendant DALK had initially negotiated payment for the work in place, but as time went on tried to dissuade MCC from paying the final bill at all.”

Paragraph 159 of the SAC was paragraph 122 of the FAC. It alleges: “After efforts of compromise failed, Defendant MCC, through their attorney presented a false argument about having paid for corrections to the work Contractor had performed in November, then he presented a fake estimate that was a forgery.”

Paragraph 160 of the SAC was paragraph 123 of the FAC and alleges: “Plaintiff claims that Defendant DALK maliciously created the document and he provided it to MCC with the intent to harm Plaintiff MAVERICK, for his own benefit. His prior pattern of intervening in termination negotiations with Strategic Industry (p.4), coupled with his violence on being fired, and his various deceptive business practices, show his pattern of malicious and deceptive behavior.

Paragraph 161 of the SAC does not appear in the FAC. It alleges: “MCC Chair RIGGLE presented the document on April 5, 2024, as DALK intended, to MCC attorney and Plaintiff MAVERICK as proof of “corrections” to Maverick’s work from five months prior, and falsely claimed she had paid the amount stated to contractor Garcia.”

Paragraph 162 of the SAC does not appear in the FAC. It alleges: “Both Defendants knew the document was false, because the document was for an estimate, dated that day of the meeting, not a signed contract.”

Paragraph 163 of the SAC was paragraph 125 of the FAC and alleges: “By presenting the fake document. MCC ratified DALK’s wrongful forgery. Both Defendants intended that everyone should rely upon the fake document when presented.”

Paragraph 164 of the SAC is a modification of paragraph 126 of the FAC. It alleges: “When the fake document was presented, Plaintiff relied on MCC’s presentation of it as proof that MCC had already paid Mr. Garcia the sum of \$30,937.”

Paragraph 165 of the SAC does not appear in the FAC. It alleges: “Plaintiff Maverick understood that the payment of \$30,937 was intended to use up the funds that were due to them.”

Paragraph 166 of the SAC was paragraph 127 of the FAC and alleges: “Plaintiff was subsequently harmed by discovering that Mr. Garcia had been paid nothing, (learning it had been a lie), then hearing from Attorney Healy on April 8, 2024, that MCC had actually made payment of \$30,937 to defendant DALK instead of to them.”

Paragraph 167 of the SAC does not appear in the FAC. It alleges: “Plaintiff was again harmed by MCC paying former employee DALK for their work.”

Paragraphs 159 through 166 do not support any of Plaintiffs’ causes of action. They purport to support the fraud cause of action against Dalk; however, the allegations of reliance and harm are conclusory. Learning of a lie does not support a cause of action for fraud unless reasonable reliance and actual harm are alleged. The motion to strike these paragraphs is GRANTED.

Paragraphs 157 and 158 appear to support Plaintiffs’ interference causes of action. Paragraph 167 supports Plaintiffs’ cause of action for fraud. The motion as to these paragraphs is DENIED.

4. Paragraphs 173 through 184.

Paragraphs 173 through 183 were stricken for failure to obtain leave.

Paragraph 184 is part of Plaintiffs’ fourth cause of action for conspiracy. It is a modification of the FAC’s paragraph 128, which was part of Plaintiffs’ cause of action for fraud against Dalk. It alleges: “Defendants DALK’s fraudulent actions and misrepresentations and Defendant MCC’s collaboration in these schemes, were a substantial factor in causing Plaintiffs harm. These actions were despicable and malicious.” This paragraph references the alleged falsified settlement document. The motion to strike is GRANTED.

d. Dalk’s conduct as a representative of Mustang

Dalk argues that allegations in the SAC pertaining to his conduct as Mustang’s representative must be stricken. These paragraphs are: 47-118, 157-164, 211, and 212. The paragraphs not already stricken for other reasons are: 48-49, 53-99, 211, and 212.

1. Paragraphs 48 and 49

Paragraphs 48 and 49 pertain to allegations that Dalk vandalized and destroyed property and interfered with MCC’s relationship with Plaintiffs. The motion as to these paragraphs is DENIED.

2. Paragraphs 53-116

Paragraph 53 pertains to alleged vandalism. Paragraphs 54 through 59 pertain to alleged retaliatory termination of Maverick by MCC. Paragraphs 60 through 72 discuss the various contracts between the parties and work performed. Paragraphs 73 through 80 discuss MCC replacing Maverick with Dalk. Paragraphs 81 through 87 discuss the amounts allegedly owed on the

contracts. Paragraphs 88-99 discuss the mechanic's lien. Paragraphs 199 and 212 pertain to Dalk's alleged interference with the contract between Plaintiffs and MCC.

Dalk has not established that these allegations are defective, irrelevant, false, and/or inappropriate as they do not strictly pertain to the actions showing an agent or employee duly acting on behalf of a principal. The motion as to these is DENIED.

e. Conclusion and Order

Dalk's motion to strike paragraphs 40, 44, 50-52, 117, 118, 152, 153, 159-167, and 173 through 184 is GRANTED. The motion as to paragraphs 48, 49, 53-116, 157, 158, and 167, 199, and 212 is DENIED.

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

4. **24CV03377, Portfolio Recovery Associates LLC v. Brisson**

APPEARANCES REQUIRED.

5. **24CV04953, JPMorgan Chase Bank N.A. v. Fajardo**

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") moves for an order to vacate the dismissal entered in this case and for entry of judgment under the terms of the stipulated settlement. The motion is made on the grounds that the parties entered into a stipulated settlement under CCP § 664.6 wherein Defendant Saul Fajardo ("Defendant") agree to pay Plaintiff the settlement sum of \$6,270.00, less payments received in good funds before default.

On or about December 28, 2024, the parties stipulated to the settlement of this case and agreed that the Court would retain jurisdiction to enforce its terms. (Carr Decl., ¶2.) Under the terms of the Stipulation Agreement and Stipulation for Judgment and Order Thereon, Defendant agreed to pay Plaintiff a one-time payment of \$350.00 on or before December 31, 2024; followed by a one-time payment of \$350.00 on or before January 28, 2025; followed by a minimum of \$557.00 on or before the 28th day of each and every month commencing in February of 2025, followed by a payment for the remaining balance due in the final month. Defendant further agreed that in the event of default, Plaintiff would be entitled to entry of judgment for the principal sum of \$8,953.47. (*Id.*, ¶3.) Defendant has defaulted on the payment arrangement under the Stipulation Agreement. (*Id.*, ¶5.) The business records of Plaintiff's Counsel indicate that the last payment received was on February 27, 2025. (*Ibid.*) Defendant has paid a total of \$1,257.00. (*Id.*, ¶6.) The balance now due, owing, and unpaid to Plaintiff from Defendant is the principal sum of \$7,696.47. (*Id.*, ¶7.)

The motion is GRANTED. Based upon the foregoing and pursuant to CCP section 664.6, the dismissal is hereby set aside and vacated, and judgment will be entered in favor of Plaintiff and against Defendant in the amount of \$7,696.47. The court will sign the proposed order and judgment.

6. **24CV07110, Looney v. Liquor King, LLC**

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order compelling Defendants Liquor King, LLC dba Liquor King, and Vick S. Arora, individually as personal guarantor of Liquor King, LLC ("Defendants"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment

Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of \$60.

On April 2, 2025, Plaintiff obtained a judgment against Defendants in the amount of \$6,175.96. On April 29, 2025, Plaintiff served Defendants with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (Id., at ¶¶2-4.)

The motion is GRANTED. Defendants are ordered to provide responses, without objections, to Plaintiff's discovery requests and pay sanctions within 30 days of this order. The court will sign the proposed order.

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

Cross-Defendants The Design Build Company, LLC (“DBC”) and its principals, John Currier (“Currier”) and Robert Auger (“Auger”), (together “XDs”) move for an award of attorney fees and expert fees incurred in defending against the Cross-Complaint filed by Cross-Complainant Eduardo De Arkos (“De Arkos”). XDs request attorneys’ fees in the amount of \$285,187.50 for DBC, \$202,711.00 for Currier, and \$175,808.00 for Auger. XDs also seek experts’ fees in the amount of \$139,921.55, of which each XD seeks reimbursement of one-third of that amount.

1. Prevailing Parties

On January 31, 2025, the jury returned a defense verdict in favor of XDs. (See Decl. of Todd Jones, Exhibit A.) Pursuant to Code of Civil Procedure section 1032(a)(4), a prevailing party includes “a defendant in whose favor a dismissal is entered” or “a defendant as against those plaintiffs who do not recover any relief against that defendant.” Accordingly, DBC, Currier, and Auger are prevailing parties on De Arkos’s cross-complaint.

2. Attorney Fees and Expert Fees

Attorneys’ fees are recoverable as costs when authorized by contract, statute, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10).)

Here, XDs seek to recover attorney and expert fees based upon the contract between DBC and De Arkos. (Jones decl., Exhibit B.) Section 12.3 provides: “ATTORNEYS' FEES. In the event either party shall prevail in any legal or equitable action or arbitration proceeding to enforce any term(s) of this Agreement, such party shall be entitled to receive from the other party all court costs, actual attorneys' fees, and all other expenses, including but not limited to expert witness fees, incurred in such litigation and the preparation thereof.” (*Ibid.*)

Currier and Auger were sued as principals of DBC based upon its contract with De Arkos. “In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.” (Civil Code section 1717(a).) Pursuant to Civil Code section 1717, they may recover under the contract.

3. Bankruptcy Stay, De Arkos’ Attorney Fees

On March 18, 2025, judgment on DBC’s complaint for Breach of Contract, Foreclosure of Mechanic’s Lien, Quantum Meruit, and Violation of Prompt Payment Statutes was entered in De Arkos’s favor. The matter came on for trial on November 15, 2024. No appearance was made on behalf of DBC. Therefore, judgment was entered for De Arkos. The order specified “Defendant shall recover all allowable Costs and Fees.”

De Arkos' motion for attorney fees was denied as a result of the stay pending in Bankruptcy Court. De Arkos obtained relief from the stay; however, that relief did not allow De Arkos to seek or recover attorney fees or costs. The Bankruptcy Court ordered: "The moving party shall have relief from stay to pursue through judgment the pending state-court litigation identified in the motion. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court."

In opposition, De Arkos argues that XDs did not obtain relief from the stay to pursue attorney fees or expert fees as the Bankruptcy Court must supervise and approve all collection efforts on behalf of DBC.

In reply, XDs argue that they are seeking fees as cross-defendants—not on behalf of DBC as the plaintiff—therefore, they argue the bankruptcy stay is not implicated. They argue that DBC's insurance carrier funded this litigation such that any recovery of attorney fees is not an asset of the bankruptcy trustee. XDs do not cite any authority to support their position.

XD's also argue that relief from the stay only applied to De Arkos. However, that argument appears to support De Arkos's position—that DBC has not obtained *any* relief from the automatic stay.

4. Conclusion and Order

XD's have not established that the bankruptcy stay applicable to DBC does not apply to this motion. Therefore, **the motion is DENIED without prejudice**. The court's minute order shall constitute the order of this court. De Arkos is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

8. SCV-271011, Pratt v. Higgins

Plaintiff David Pratt ("Plaintiff"), an individual, directly and derivatively on behalf of 3G Green Garden Group, LLC, d.b.a. Emerald Harvest, a California limited liability company, moves for an Order compelling Defendant Robert Higgins ("Higgins") to provide further responses to Plaintiff's Request for Production of Writings, Set 1, dated February 10, 2025. Plaintiff requests monetary sanctions in the amount of \$24,928.15, jointly and severally against Higgins and his attorneys.

1. Discovery Requests

Plaintiff's Request for Production, No. 1 seeks: "All CLIENT FILES and WRITINGS CONCERNING 3GL received by YOU from attorney Edward S. Sherman between January 1, 2024, and the present day."

Plaintiff's Request for Production, No. 2 seeks: "All COMMUNICATIONS by and between YOU and attorney Edward S. Sherman CONCERNING any subpoena served on Mr. Sherman in this action between January 1, 2024, to the present day."

Plaintiff's Request for Production, No. 3 seeks: "All COMMUNICATIONS by and between YOU and attorney Edward S. Sherman CONCERNING 3GL between January 1, 2024, to the present day."

Higgins' responses consisted solely of objections.

2. Factual Support

Plaintiff argues Mr. Sherman was retained by 3GL shortly after it commenced business operations in January 2014, to protect the intellectual property rights associated with its new product line of hydroponic fertilizers and plant nutrients. (SAC ¶¶ 42 (j), 74, 75, 79, 124; Pratt

Decl., ¶¶ 3-4.) Plaintiff argues Mr. Sherman is a percipient witness to pertinent events, submitted approximately 26 different applications on 3GL's behalf with the U.S. Patent and Trademark Office. (Pratt Decl., ¶ 3.) Plaintiff argues the right of ownership of the intellectual property rights associated with Mr. Sherman's product registrations on behalf of 3GL is one of this lawsuit's central issues. (SAC ¶¶ 42 (j), 74, 75, 79, 124; Shklovsky's Decl., ¶ 4.) As alleged in the Verified SAC, Defendant Sharon Higgins directed Mr. Sherman to send all registered trademark certificates and design patent approvals obtained on behalf of 3GL directly to her in Canada as part of said Defendants' broader plan to assert complete control over 3GL and wrongfully divert millions of dollars in revenues from 3GL's product sales directly to their two Canadian companies, Defendants 3G Green Garden Group, Inc. ("3GG") and Emeral Harvest, Inc. ("EHI"). (SAC, ¶¶ 42 (j), 74, 75, 79, and 124.) Plaintiff argues the product names Mr. Sherman trademarked for 3GL, as well as the ownership rights to the related artwork and designs, are at the center of Plaintiff's SAC, forming the core of several of his principal claims.

Plaintiff states that in November 2024, he served Mr. Sherman with a Deposition Subpoena for the Production of Business Records seeking his 3GL client files. In response to that subpoena, Mr. Sherman informed Plaintiff that he had delivered his entire 3GL client file to Defendants' counsel of record in this case (Hanson Bridgett, LLP), kept no hard copies of such files, and permanently deleted all electronic copies. (Shklovsky Decl., ¶¶ 9-10, 13-14, and Exh. B thereto [Mr. Sherman's December 9, 2024 email].)

Plaintiff also notes the parties entered into a Stipulated Protective Order on July 31, 2024, designated to protect confidential information.

He also notes that while some documents might be publicly available, Higgins's records are readily available and may contain additional related letters, memorandum, emails, and notes.

3. Attorney-Client Privilege – Waiver

Plaintiff argues that it is beyond dispute that 3GL retained Mr. Sherman. Where the client is a corporation, the power to assert and waive the attorney-client privilege held by a corporation belongs to corporate management and is normally exercised by the corporation's officers and directors. (*Melendrez v. Superior Court* (2013) 215 Cal.App.4th 1343, 1353–1354.)

Plaintiff does not contest Higgins's representation of being the sole manager of 3GL, or his assertion that he alone may claim or waive the attorney-client privilege on behalf of 3GL. Rather, he argues that Higgins waived the privilege.

A waiver of the attorney-client privilege occurs "if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege." (Evid. Code, § 912, subd. (a).) Failure to claim the privilege constitutes consent to disclosure and a waiver of the privilege only if the holder, in a proceeding in which he or she has the legal standing and opportunity to claim the privilege, fails to claim the privilege knowing that the disclosure of privileged information is sought. (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 112.) If these conditions are satisfied, the holder's failure to assert the privilege through his or her attorney constitutes a waiver if the holder had an opportunity to consult with the attorney. (*Ibid.*)

Plaintiff argues the objection based upon the attorney-client privilege has been waived because Mr. Sherman disclosed, not just "a significant part of the communication" within the meaning of Section 912(a), but the entirety of his 3GL files and records to Hanson Bridgett. (Shklovsky Decl., ¶¶ 2, 9-10, 14, and Exh. B.) Plaintiff concludes that Higgins failed to raise the privilege at the time the files were transferred and thus he concludes it constituted a waiver by 3GL of the privileged character that otherwise attached to said files.

Plaintiff's counsel's declaration states: "The files and records that are the subjects of Pratt's Request for Production of Writings, Set 1, are those of 3GL's former legal counsel, Edward S. Sherman, a California licensed patent and trademark attorney in Santa Rosa, California. As described in more detail below, sometime between February and December 2024, Mr. Sherman delivered all of 3GL's client files and records to Defendants' attorneys herein, Hanson Bridgett, LLP, and destroyed all remaining copies thereof." (Shklovsky decl., ¶2.)

"On December 9, 2024, Mr. Sherman sent me an email about the Subpoena. A true and correct copy of said email is attached hereto as Exhibit B." (*Id.*, ¶9.)

"In summary, Mr. Sherman's email said he was writing to 'formally advise' me that the subpoenaed records 'likely involved confidential and proprietary information,' he was no longer in private practice, that all of his 'records, electronic and paper documents in [his] possession' were 'returned to his client via a transfer to its counsel, Hanson Bridgett, LLP.' Mr. Sherman added, 'I no longer have any paper records, and have deleted electronic copies after confirmation of transfer to Hansen [*sic*] Bridget [*sic*].' He concluded his email by saying he would not, therefore, be complying with Plaintiff's current subpoena or any future subpoenas because he no longer has any documents involving 3GL." (*Id.*, ¶10; Exhibit B.)

"Apparently, Mr. Sherman's thinking changed between February and December 2024. Rather than comply with Plaintiff's Amended Subpoena as he previously said he was prepared to do, Mr. Sherman proclaimed that he had delivered all of 3GL's client files and records to Hanson Bridgett, kept no hard copies, and destroyed all remaining electronic copies." (*Id.*, ¶14.)

Plaintiff has not cited authority that a transfer of files from one's former attorney to its current attorney constitutes a waiver of the attorney-client privilege. Plaintiff has not provided any evidence that the contents of the file were disclosed to any person other than Higgins' attorneys. Plaintiff also concludes, without authority or evidence, that Higgins was required to raise the privilege when the files were transferred between attorneys and that he failed to do so.

Plaintiff also appears to argue that because Hanson Bridgett represents additional defendants—Mrs. Higgins, 3GI, and EHI—the transfer of the files to Hanson Bridgett was a de facto transfer to the three additional defendants. Plaintiff argues Mrs. Higgins, 3GI, and EHI are not "reasonably necessary" to the confidential relationship such that they were outside the protected client relationship that existed solely between 3GL and Mr. Sherman. Plaintiff goes on to argue that the "common interest doctrine" does not apply to Mrs. Higgins, 3GI, and EHI to shield the documents.

Plaintiff's argument is unsupported by legal authority or evidence. There are no facts showing that Hanson Bridgett has disclosed anything within the file to anyone. Nor has Plaintiff established that the interests of Higgins, Mrs. Higgins, 3GI, and EHI are not aligned.

Plaintiff goes on to argue that Hanson Bridgett has an incurable conflict of interest between Higgins, Mrs. Higgins, 3GI, and EHI, which constitutes a second reason Higgins cannot invoke the common interest doctrine. Plaintiff relies solely on his own conclusions without supporting evidence.

Plaintiff has not met his burden to establish Higgins, on behalf of 3GL, waived the attorney-client privilege.

4. Sanctions

Both parties request sanctions. CCP section 2031.310(h) provides: the "court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Plaintiff has not established this motion was made with substantial justification or that other circumstances make the imposition of the sanction unjust. Accordingly, sanctions will be granted in Higgins' favor.

Higgins requests \$15,626.50 in attorney fees for opposing this motion. Attorney Brian Hoops was primarily responsible for preparing the opposition.

Mr. Hoops states that he has been licensed in California since 2018 and that his billing rate is \$540 per hour. (Hoops decl., ¶¶3, 4.) He spent 15.7 hours reviewing and analyzing Plaintiff's moving papers; performing legal research regarding the invocation and authority to assert the attorney-client privilege, potential waiver of the attorney-client privilege, legal requirements regarding separate statements, and the requirements for compelling further responses; and drafting the opposition. (*Id.*, ¶¶5, 6.)

Mr. Dutra states he has been a litigation attorney for approximately 15 years. (Dutra decl., ¶3.) He states his hourly rate is \$805. (*Id.*, ¶5.) Mr. Dutra states he spent 5.8 hours reviewing and analyzing Plaintiff's papers to assist and direct Mr. Hoops. (*Id.*, ¶5.)

Ms. Ziemianek states she spent in excess of 2.9 hours at an hourly rate of \$855 reviewing and analyzing Plaintiff's Motion papers to provide strategic direction to associate Hoops. (Ziemianek decl., ¶9.) Ms. Ziemianek has been a litigation attorney for approximately 21 years. (*Id.*, ¶3.)

Overall, the hourly rates are excessive for this area. An attorney billed at \$540 should not need supervision from two additional attorneys on this type of motion. In addition, the amount of sanctions given on a motion to compel further responses to three discovery requests is usually much lower than the amount requested in this case. The court will grant sanctions in Higgins' favor in the amount of \$6,500.

5. Conclusion and Order

Plaintiff's motion is DENIED. Sanctions are granted in the amount of \$6,500 in favor of Higgins and against Plaintiff. Plaintiff is directed to pay the sanctions within 30 days of this order.

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

9. **SCV-273873, County of Sonoma v. Engquist, III**

Plaintiff County of Sonoma ("County") moves for an order compelling Defendant Sember Engquist ("Defendant") to provide full and complete, verified responses to County's Special Interrogatories, Set No. One to Defendant Sember Engquist, request numbers 1, 2, and 3. The County requests sanctions in the amount of \$1,615.00.

Trial went forward in this case on October 31, 2025. As such, **this motion is DROPPED as MOOT.**