TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, September 16, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

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

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

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1-2. 25CV08496, Mendelsohn v. APTB, LLC

This is a joint ruling on the motions to compel arbitration and stay action filed by (1) Defendant Aspen Skilled Healthcare, Inc. and (2) Defendants Haley McLaughlin, Shirley Kraft, Vern Jay Brady, Ryan Case, and Jeffrey Bradshaw.

Both motions to compel arbitration are **GRANTED in part** and **DENIED in part,** as explained below. Both requests for stay are **GRANTED**. These proceedings shall be stayed until the arbitration is completed. The demurrer and motion to strike that are currently scheduled for October 21, 2026, are **DROPPED FROM CALENDAR** due to the stay. The moving party may seek to have them added back onto the calendar once the stay is lifted.

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

<u>Analysis</u>:

Plaintiffs are the heirs of the decedent, Francoise Mendelsohn. They bring this action both individually and as successors in interest to the decedent. In their First Amended Complaint they raise two causes of action against Defendants, one for wrongful death and one for elder abuse. Defendants Petaluma Post-Acute Rehab; Aspen Skilled Healthcare, Inc.; Jeffrey Bradshaw; Ryan Case; Vern Jay Brady; Shirley Kraft; Haley Mclaughlin and Does 1-20 are alleged to have been doing business as Petaluma Post-Acute, a 24-hour health facility as defined in Health & S C §1250(c). Defendant Saw Aye, M.D. is alleged to have been the attending physician at Petaluma Post-Acute Rehab. Plaintiffs allege that all of the defendants were responsible for the care of the decedent while she was admitted to their facility. They allege that the decedent's death was the result of elder abuse she suffered while in their care.

Defendant, APTB, LLC (erroneously sued as Petaluma Post-Acute Rehab) previously moved for an order compelling all claims by all plaintiffs to arbitration and to the stay the action. The Court granted the motion in part and denied it in part, finding that the Plaintiffs' individual wrongful death claim was not arbitrable, but that the representative elder abuse claim was. The Court agreed that this action must be stayed pending the arbitration, but that these two motions to compel arbitration should still be decided.

The two motions to compel arbitration currently before the Court are brought by (1) Aspen Skilled Healthcare, Inc. and (2) Haley McLaughlin, Shirley Kraft, Vern Jay Brady, Ryan Case, and Jeffrey Bradshaw. Neither of these defendants is a signatory to the arbitration agreement. Nonetheless, they argue that they are entitled to enforce it. The Court agrees, as explained below.

I. <u>Defendants Have Met their Initial Burden on these Motions</u>

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) "Because arbitration is a matter of contract, the general rule is that one must be a party to an arbitration agreement to invoke or be bound by its terms." (*Enmark v. KF Community Care, LLC* (2024) 105 Cal.App.5th 463, 471.)

Upon admission, Decedent signed an arbitration agreement that provided as follows, in pertinent part,

> It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings.

(Foster Decl., Ex. A, Article I.)

> It is further understood that any dispute between Resident, including Resident's heirs and/or agents, and APTB, LLC ("Facility"), and their owners, investors, operators, officers, directors, administrators, staff, employees, agents, and any management and administrative services company and all related entities and individuals, their staff, personnel, employees, owners, officers, directors, members, and agents that provide services to the Facility that relates to the provision of care, treatment and services the Facility provides to the Resident, (collectively referred to herein as "Facility), including any action for injury or death arising from negligence, torts, intentional tort and/or statutory causes of action (including all California Welfare and Institutions Code sections, all California Business and Professions Code sections, Health and Safety Code section 1430), and all other statutory claims under any applicable California code, will be determined by submission to binding arbitration and not by lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings.

(Foster Decl., Ex. A, Article II.)

> This Agreement is binding on all parties, including the Resident's representatives, executors, family members, and heirs who bring any claims individually or in a representative capacity.

(Foster Decl., Ex. A, Article III.)

Non-signatory defendants may seek to enforce the arbitration agreement against a signatory under such theories as incorporation by reference, assumption, agency, veil-piercing or alter ego, and third-party beneficiary. (*Jenks v. DLA Piper Rudnick Gray Cary U.S. LLP* (2015) 243 Cal.App.4th 1, 9-10, 196 CR3d 237, 243-244; *Suh v. Superior Ct.* (2010) 181 Cal.App.4th 1504, 1513.) "These exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it 'generally are based on the existence of a relationship between the nonsignatory and the signatory, such as principal and agent or employer and employee, where a sufficient 'identity of interest' exists between them.'" (*DMS Servs., LLC v. Superior Ct.* (2012) 205 Cal.App.4th 1346, 1353.)

Here, the contract is signed by a representative of the "Facility," which is identified as APTB, LLC (dba Petaluma Post-Acute Rehab). Plaintiffs allege that Aspen Skilled Healthcare, Inc. is the corporate parent of Petaluma Post-Acute Rehab (APTB, LLC). They allege that Jeffrey Bradshaw, Ryan Case, and Vern Jay Brady were the owners of Aspen Skilled Healthcare, Inc. and in that capacity were responsible for ensuring that Aspen Skilled Healthcare, Inc.'s facilities provided appropriate patient care. They also allege that Jeffrey Bradshaw, Vern Jay Brady, and Ryan Case are the owners and operators of Petaluma Post Acute-Rehab. Finally, Haley McLaughlin and Shiley Kraft are alleged to be the administrators of Petaluma Post Acute-Rehab.

As stated above, the arbitration agreement expressly applies to disputes between "Resident, including Resident's heirs and/or agents, and APTB, LLC ("Facility"), and *their owners,* investors, *operators*, officers, directors, administrators, *staff, employees, agents*, and any management and administrative services company and *all related entities and individuals*, their staff, personnel, employees, owners, officers, directors, members, and agents that provide services to the Facility that relates to the provision of care, treatment and services the Facility provides to the Resident…" (Emphasis added.) Considering this language and considering the alleged relationships/roles of each of the moving defendants, the moving defendants do have the right to enforce the arbitration agreement though they are not signatories.

II. Plaintiffs' Individual Wrongful Death Claim is Not Subject to Arbitration

Plaintiffs Michael Mendelsohn and Lucille Herman are not signatories to the arbitration agreement. As such, they have not consented to arbitration. The general rule is that one who has not consented to arbitrate a claim cannot be compelled to do so. (*Goldman v. Sunbridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1176.)

Defendants argue that CCP § 1295 and *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, apply here and require Plaintiffs' wrongful death claim to be arbitrated even though they are not signatories to the arbitration agreement. In *Ruiz*, the California Supreme Court created an exception to the general rule against compelling non-consenting parties to arbitration. The *Ruiz* Court held that CCP § 1295 permitted patients who consented to arbitration "of any dispute regarding professional negligence of a health care provider" to bind their heirs in actions for wrongful death.

Subsequent to *Ruiz*, the courts have clarified that *Ruiz* applies in the narrow circumstance where the heirs' wrongful death claim is rooted in allegations of professional negligence, as opposed to allegations of elder abuse. As explained in *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 842,

> If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) (the Act), then section 1295 does not apply and neither does *Ruiz*'s exception to the general rule that one who has not consented cannot be compelled to arbitrate.

As further explained in *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1084,

> Under the rule of *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 841, 114 Cal.Rptr.3d 263, 237 P.3d 584, as applied by this court in *Bush v. Horizon West* (2012) 205 Cal.App.4th 924, 929, 140 Cal.Rptr.3d 258, a patient of a skilled nursing facility can bind her heirs to arbitrate wrongful death claims arising only from medical malpractice, but not from elder abuse. The children did not allege medical malpractice or professional negligence.

"Ruiz [has] no bearing on third party wrongful death claims outside the context of section 1295." (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 677.)

Most recently, the California Supreme Court in *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364, 379, has explained,

> "Professional negligence," we held, refers to "negligence in the *undertaking* of medical services," or in other words, "to the performance of medical services in a manner inferior to ' "the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing." ' "…By contrast, custodial neglect refers to the "*failure* of those responsible for *attending* to the basic needs and comforts of elderly or dependent adults" and applies "regardless of their professional standing."…Thus, as a general rule, a plaintiff who alleges wrongful death based on custodial neglect under the Elder Abuse Act is not alleging wrongful death based on medical malpractice.

The Court recognized, "…however, there is potential for confusion 'in the fact that some health care institutions, such as nursing homes, perform custodial functions and provide professional medical care…This can complicate efforts to draw lines between claims concerning the provision of professional medical services and other services the facilities may provide.'" (*Id*. at 379-380.) The Court explained, "Our cases offer guidance. We have explained that only acts or omissions by a skilled nursing facility in its capacity as a health care provider fall under the banner of professional negligence." (*Id*. at 380.) "By contrast…The failure to provide basic necessities, such as assistance in personal hygiene, food, hydration, or clothing, are paradigmatic examples of a failure to fulfill custodial duties." (*Ibid*.) "The same is true of a failure to provide an adequate and habitable living space or protect from routine safety hazards." (*Ibid*.) "Similarly, a failure of staff to attend to, monitor, or assist a resident in obtaining appropriate medical care generally falls on the custodial side of the line because such omissions involve 'not ... the undertaking of medical services, but…the failure to provide medical care.'" (*Ibid*.) "Claims premised on the manner in which skilled nursing or other long-term care facilities protect the basic welfare and safety of residents fall outside the scope of section 1295(a), and thus outside the scope of *Ruiz*." (*Id*. at 381.) Moreover,

> Certainly, in some cases, a claim of injury from falls and infection might be based on negligence in prescribing or executing a plan to address a resident's medical needs. But in other cases, the claim of injury might be based on a failure to adequately supervise and render assistance to residents as they undertake daily activities, or the failure to ascertain whether residents need medical treatment despite easily observable physical manifestations of possible illness. While the first sort of claim may sound in professional negligence, the second sort of claim generally does not.

(*Id*. at 381–382.) "The critical question remains whether the complaint alleges negligent acts or omissions by 'health care providers in their capacity as providers' rather than 'against custodians and caregivers…that may or may not, incidentally, also be health care providers.'" (*Id*. at 382.)

Here, the Court agrees with Plaintiffs that Plaintiffs' allegations are based on custodial neglect under the Elder Abuse Act rather than wrongful death based on medical malpractice. Their allegations are characteristic of neglect by custodians and caregivers who are incidentally health care providers, rather than by healthcare providers in their capacity as providers. (*Holland*, *supra*, at 382.)

For example, Plaintiffs allege "DEFENDANTS, and each of them, were responsible for Ms. Mendelsohn's basic needs, and she had a robust custodial relationship with all defendants to provide for her own basic needs." (FAC ⁋ 13.) "On April 9, 2025, Ms. Mendelsohn was classified as a high fall risk. All Defendants knew Ms. Mendelsohn was a high fall risk and repeatedly failed to provide basic fall protections." (FAC ⁋ 14.) "Due to SKILLED NURSING DFEFENDANTS' chronic understaffing, Decedent was then left unattended for a long period of time. As a result, decedent sustained many falls while a patient at Petaluma Post Acute." (FAC ⁋ 15.) "SKILLED NURSING DEFENDANTS had a long history of neglecting patients, including Ms. Mendelsohn, by not responding to call lights timely or not at all, forcing patients to get out of bed on their own despite being known high fall risks." (FAC ⁋ 22.) "SKILLED NURSING DEFENDANTS had a long history of neglecting patients, including Ms. Mendelsohn, by also not implementing fall prevention measures, despite having patients who are known high fall risks." (FAC ⁋ 23.) "Managing agents of SKILLED NURSING DEFENDANTS disregarded the blatant signs that Ms. Mendelsohn needed additional care." (FAC ⁋ 25.)

Since Plaintiffs' wrongful death claim is rooted in elder abuse allegations, it does not fall under CCP § 1295 or *Ruiz, supra,* and it cannot be compelled to arbitration.

III. Plaintiffs' Elder Abuse Claim is Subject to Arbitration

Unlike their wrongful death cause of action, which is individual to the Plaintiffs, their elder abuse claim is a representative cause of action brought on behalf of the decedent. This cause of action is arbitrable under the terms of the arbitration agreement. Plaintiffs have raised no defenses to arbitration of this cause of action. They simply argue that it should not be compelled to arbitration pursuant to CCP § 1281.2(c). However, CCP § 1281.2 does not apply here.

The parties expressly agreed that both the substantive and procedural rules of the Federal Arbitration Act ("FAA") would apply to any dispute described in the arbitration agreement.

> …the parties agree that this Agreement is to be governed by the Federal Arbitration Act (9 U.S.C. §§1-16) and the procedural rules set forth in the Federal Arbitration Act shall govern any and all arbitration proceedings, including any petition to compel arbitration.

(Foster Decl., Ex. A, Article VII.) Moreover, the parties expressly agreed that CCP § 1281.2 is excluded from their agreement.

> The parties agree that California Code of Civil Procedure §1281.2(c) is excluded from this Agreement as the parties mutually desire to have any and all disputes submitted to binding arbitration. The parties do not want any claims or related lawsuits not subject to arbitration to impede any and all other claims from being ordered to binding arbitration.

(Foster Decl., Ex. A, Article VII.)

Since the FAA applies here and since the FAA does not contain a provision analogous to CCP § 1281.2(c), "that subdivision cannot be applied to deny the enforcement of arbitration clauses governed by the FAA." (*Gloster v. Sonic Automotive, Inc.* (2014) 226 Cal.App.4th 438, 446.) As in *Gloster*, "The parties could not have stated their intent that section 1281.2, subdivision (c) would not be applied to defeat enforcement of the arbitration clause in the [] agreement any more clearly." (*Gloster*, *supra*, at 447.) CCP § 1281.2 is not applicable here. Plaintiffs' elder abuse claim shall be arbitrated.

Plaintiffs argue in the alternative that the arbitration should be stayed pending the resolution of the wrongful death claims in court pursuant to CCP § 1281.2. Again, CCP § 1281.2 does not apply to this matter.

IV. Stay of Proceedings

As discussed above, the parties expressly agreed that the procedural rules of the FAA were to apply. Accordingly, the Court is mandated to stay these proceedings pending the arbitration pursuant to 9 U.S.C. § 3. Even under California law, the Court is mandated to do so. (CCP § 1281.4.) These proceedings shall be stayed until the arbitration is completed.

3. 25CV05359, Cunningham v. Burks

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

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

Analysis:

Plaintiffs filed their original Complaint on July 31, 2025, and the operative First Amended Complaint on October 13, 2025, alleging nine causes of action against numerous defendants arising from a $675,000 loan Plaintiffs made to Defendants Dietrick Burks and Burks & Co., LLC, intended to be secured by two floating homes. As relating to the moving defendant, Leuth Khaleck, Plaintiffs allege Defendant Khaleck is a real estate broker licensed in the State of California who conducts business with the defendant Mortgage Network Wholesaler Lender, LLC. Plaintiffs allege that Defendant Khaleck and Defendant Oechslin were the loan agents for Plaintiff Cunningham.

Plaintiffs also allege that on February 13, 2024, Defendant Khaleck emailed Defendant Cullen stating, "Not sure if escrow officer completed the paperwork to the 2nd [floating] home." This is the extent of the specific factual allegations alleged against this defendant.

Defendant Khaleck herein demurrers to each cause of action of the FAC, except the Eighth, as failing to state a cause of action against him. Defendant does not demur on the basis of uncertainty.

I. First Cause of Action – Breach of Fiduciary Duty of Real Estate Brokers

This cause of action is alleged against "Brokers, Salespersons, and Brokerage Firm Defendants" These terms—"Brokers," "Salespersons," and "Brokerage Firm Defendants"—are not defined anywhere in the FAC. Accordingly, though Defendant Khaleck did not demur to this cause of action as being uncertain, Defendant and the Court can only assume that it is being alleged against the moving defendant.

Assuming this cause of action is alleged against Defendant Khaleck, Plaintiffs fail to state sufficient facts to support this cause of action against him in his personal capacity. "'The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.'" (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932.) A fiduciary duty is founded upon a special relationship imposed by law or when "confidence is reposed by persons in the integrity of others" who voluntarily accept the confidence. (*Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg* (1989) 216 Cal.App.3d 1139, 1150.)

Plaintiffs allege that Defendant Peter Kerston brokered the loan from Plaintiff Cunningham to Defendant Burks. Plaintiffs allege only that Defendant Khaleck was a "loan agent," with no further explanation of what this role entailed or the extent of Defendant Khaleck's involvement in the transaction, other than a single email. Plaintiffs have not alleged facts supporting the existence of a fiduciary relationship between Plaintiffs and Defendant Khaleck.

II. Second Cause of Action – Professional Negligence

Here, as with the First Cause of Action, this cause of action is alleged against "Brokers, Salespersons, and Brokerage Firm Defendants." For the same reasons explained above, both Defendant and the Court can only assume that it is being alleged against Defendant Khaleck. Plaintiffs have failed to state sufficient facts to support this cause of action against Defendant Khaleck in his personal capacity. "The elements of a claim for professional negligence are: '(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.'" (*Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1095.) California's general rule is that "privity of contract is a requisite to a professional negligence claim." (*Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137.) As discussed further below, Plaintiffs have failed to allege the existence of a contract between the Plaintiffs and Defendant Khaleck. They have failed to allege sufficient facts supporting the existence of a professional duty owed by Defendant Khaleck to Plaintiffs.

III. Third, Fourth, Fifth, and Sixth Causes of Action – Constructive Fraud, Intentional Misrepresentation, Concealment, and Negligent Misrepresentation

Plaintiffs assert four fraud causes of action against all defendants. "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.) Plaintiffs have failed to do so for any of the fraud causes of action. They are each alleged in general terms and contain no facts specific to Defendant Khaleck. Plaintiffs' opposition does not defend the sufficiency of their fraud allegations, but instead asks for leave to amend.

IV. Seventh Cause of Action – Breach of Contract

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1489.) "[T]he complaint must indicate on its face whether the contract is written, oral, or implied by conduct." (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 458–459.) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect." (*Ibid.*) "In order to plead a contract by its legal effect, plaintiff must "allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions." (*Ibid.*)

Plaintiffs have failed to allege the existence of a contract between themselves and Defendant Khaleck. Assuming the loan agreement is the contract on which this cause of action is based, Plaintiffs have failed to allege that Defendant Khaleck was a member to that contract. Plaintiffs only specifically identify "Defendants Burk and Burk & Co." as having executed the loan. Again, Plaintiffs do not defend the sufficiency of their allegations supporting this cause of action but ask for leave to amend.

V. Ninth Cause of Action – Financial Elder Abuse

To prevail on a cause of action for financial elder abuse, a plaintiff must prove all of the following:

1. That Defendant either took/hid/appropriated/obtained/retained Plaintiff's property, or assisted in taking/hiding/appropriating/obtaining/retaining Plaintiff's property;
2. That Plaintiff was 65 years of age or older/a dependent adult at the time of the conduct;
3. That Defendant took/hid/appropriated/obtained/retained/assisted in taking/hiding/appropriating/obtaining/retaining the property for a wrongful use or with the intent to defraud or by undue influence;
4. That Plaintiff was harmed; and
5. That Defendant's conduct was a substantial factor in causing Plaintiff's harm.

(CACI 3100.) Statutory causes of action, such as financial elder abuse, must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

Plaintiffs allege generally that "Defendants' actions in appropriating, obtaining, or retaining plaintiff's property for a wrongful use or with the intent to defraud as described above in this complaint constitute elder financial abuse." Plaintiffs fail to plead this action with particularity. Plaintiffs also fail to describe any actions taken by Defendant Khaleck that would constitute taking, hiding, appropriating, obtaining, or retaining Plaintiff's property. In their opposition, Plaintiffs acknowledge the lack of particularity in their pleading and ask for leave to amend.

VI. Leave to Amend

It is Plaintiff's burden to show how the complaint can be amended to state a cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Though Plaintiffs have not outlined how the FAC can be amended to state a viable cause of action against this Defendant, it is generally an abuse of discretion to deny leave to amend where there is any possibility a plaintiff can state a claim. Since Plaintiffs have filed an opposition seeking leave to amend, the Court will grant them a chance to amend.

4. 24CV01706, Contrarian Investors Fund LLC v. Patoka

Patoka's motion for judicial notice is **GRANTED**.

Patoka's **unopposed** motion for summary adjudication of the Second Cause of Action (common counts: money had and received) is **GRANTED.**

The hearing on Patoka's **unopposed** motion for summary adjudication of the First and Fourth Causes of Action (respectively breach of contract and breach of fiduciary duty) is **CONTINUED** to November 18, 2026 at 3:00 p.m. At any time up to November 2, 2026, Patoka may file and serve supplementary briefing describing how the figure of $73,000.00 in accrued interest on her line of credit was calculated. If Patoka has financial records supporting the figure, she is urged to attach them. The Court intends to grant the motion as to all three causes of action and sign Patoka's proposed order after the new hearing, but if Patoka fails to provide the supplementary briefing, or if the supplementary briefing does not provide undisputed evidence of how the $73,000 figure was arrived at, the Court will reduce the damages associated with the First and Fourth Causes of Action by $73,000.00.

I. Background

A. Parties

Kathrina Patoka is a homeowner; Sean Lewis is a home renovator who worked on her home and became friends with her. This action springs from their agreement that Patoka would fund the purchase of residential property that Lewis would renovate and sell for a profit.

Custom Care Home Repair ("CCHR") is the fictitious business name of Lewis's sole proprietorship.

Contrarian Investors Fund, LLC ("Contrarian") is an LLC that was established on August 24, 2022. Its only members and co-managers are Patoka and Lewis.

Chad Hought is an individual who worked for CCHR and Contrarian. He is not a member of Contrarian.

Skye Builders is a California corporation licensed to perform residential construction work. They are involved in this matter because Lewis represented to Patoka that he was performing construction work under Skye's contractor's license.

B. The original complaint (no longer operative)

This lawsuit was commenced by a complaint filed on March 11, 2024 by Contrarian against Patoka. The complaint alleges several causes of action against Patoka in connection with her withdrawal of $333,807.69 from Contrarian's bank account.

Again, Patoka is a member and co-manager of Contrarian. The complaint was dismissed on July 9, 2024 on the basis that counsel for Contrarian, the Buchalter firm, had a conflict of interest in representing Contrarian in a lawsuit against one of its members. Buchalter withdrew as counsel for Contrarian on January 24, 2025. Contrarian remains unrepresented, and no further complaint has been filed.

C. The cross-complaint (the operative pleading)

On April 18, 2024, Patoka cross-complained against Lewis. (CCHR, Contrarian, Hought, and Skye Builders are also named as cross-defendants.) The cross-complaint alleges that Patoka loaned over a million dollars to Contrarian; that under Lewis's direction, Contrarian purchased, renovated, and sold two properties (the "Pinot" and "Ripley" properties), and purchased a third one (the "Cloverdale" property); that Contrarian never fully repaid Patoka's loans as agreed; that Lewis had misappropriated some of the funds; and that the bank withdrawal at the heart of the original complaint was justified as a partial payment of Patoka's outstanding loans to Contrarian.

Lewis and Hought answered the cross-complaint on June 13, 2024. At that time they were represented by attorney John Kelly. However, Kelly substituted out in favor of Lewis and Hought in pro. per. on August 19, 2024.

D. Cross-defendants have not been litigating this matter.

Lewis and Hought remain unrepresented, and neither has filed anything at all in this matter since their counsel substituted out.

Lewis has not opposed the instant motion. On September 4, Patoka filed a Notice of Non-Opposition indicating that fact.

II. Judicial notice

All of Patoka's requests for judicial notice are granted. The Court will take judicial notice of a search result from the California Contractor Licensing Board showing that there is no licensed contractor named Sean Lewis and residing in Sonoma County; a similar search result showing that CCHR is not a licensed contractor; and a number of pleadings filed in the instant case.

On its own motion, the Court takes judicial notice of the Fictitious Business Name statement on the Sonoma County website showing that "CUSTOM CARE HOME REPAIR" is a fictitious business name registered by Sean Lewis as an individual. (Evid. Code § 452(h); <https://tinyurl.com/cchrfbn>.)

III. Governing law

A party moving for summary adjudication of a cause of action "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Thus, a plaintiff moving for summary adjudication of a cause of action bears the burden of persuasion that each element of the cause of action in question has been proved by undisputed evidence. (Rutter Group, California Practice Guide: Civil Procedure Before Trial ¶ 10:224.)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar, supra,* at p. 861.) If the moving party carries this burden, the burden shifts: the opposing party is then subject to its own burden of production to make a prima facie showing that a triable issue of material fact exists. (*Ibid;* CCP § 473c(p)(2).) However, the opposing party's failure to file timely opposition to a motion for summary adjudication does not oblige the Court to grant the motion. (*Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 613.)

IV. Analysis

A. Issue #1: Fourth Cause of Action for breach of fiduciary duty

The elements of a cause of action for fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433.) With the exception noted below regarding the accrued-interest component of the damages, the undisputed evidence supports each element.

1. Existence of a fiduciary relationship

Whether a fiduciary relationship exists is a question of law. (*Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 915. Here, the relationship exists by virtue of Patoka and Lewis being co-managers of an LLC. (Corp. Code § 17704.09.)

LLCs have two distinct management structures: they may be member-managed or manager-managed. In a member-managed LLC, the fiduciary relationship runs between the member-managers; in a manager-managed one, it runs between the manager and each member, but not between the members. Undisputed evidence shows that Contrarian is organized as a member-managed LLC. Its Articles of Organization, filed with the Secretary of State on August 24, 2022, indicate that it "will be managed by . . . More than One Manager." (Patoka Dec, Exh. A.) The Statement of Information filed on October 17, 2022 indicates that the only "Manager(s) or

Member(s)" listed are Lewis and Patoka. Since there is more than one manager and there are only two members, the inescapable conclusion is that both members are co-managers.

2. Breach

"The fiduciary duties that a member owes to a member-managed limited liability company and the other members of the limited liability company are the duties of loyalty and care . . . ." (Corp. Code § 17704.09(a).

a. Duty of loyalty

California courts have interpreted the duty of loyalty described in Corp. Code § 17704.09(b) to require that a member act with the utmost loyalty and in the highest good faith when dealing with any other member of the LLC. (*Feresi v. The Livery, LLC* (2014) 232 Cal.App.4th 419, 425.) A member subject to the duty of loyalty may not obtain any advantage over any other member by even the slightest misrepresentation or concealment. (*Ibid.*)

The list of ways in which Lewis failed to act in the highest good faith, as established by undisputed evidence, is a lengthy one. To begin with, Patoka's declaration establishes that Lewis failed to fully repay Patoka's loans after the Ripley and Pinot properties were sold. (Patoka Dec ¶¶ 15(i)-(iii), 21, 43-46, 62; see CCP § 437c(e) [witness declaration adequate to establish facts on summary judgment].) Both the declaration and Contrarian's bank records establish that Lewis routinely used Contrarian funds for personal expenditures, including for meals, sports memorabilia, and haircuts. (Patoka Dec ¶ 58; Separate Statement of Undisputed Facts ("SSUF") no. 62, pp. 12-14.) Lewis also transferred at least $94,530 from Contrarian's bank account to his own. (SSUF no. 63; Soldis Dec (RJN 7) ¶ 11.)

There are additional examples, but that will suffice to support the finding that Lewis breached his fiduciary duty to Patoka by violating his duty of loyalty.

b. Duty of care

"A member's duty of care to a limited liability company and the other members . . . is limited to refraining from grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." (Corp. Code § 1774.09(c).)

Undisputed evidence shows that Lewis performed construction work on the Pinot and Ripley properties despite not being a licensed contractor, and purported to be working under a contractor's license issued to Skye Builders. (Patoka Dec, ¶¶ 6, 8.) The former would violate Bus. & Prof. Code § 7028, and the latter Bus. & Prof. Code § 7027.3, if the conduct was knowing and was intended to defraud. However, those states of mind are not supported by undisputed evidence. There is no evidence showing that Lewis knew that he could not legally be covered by Skye's license, or that he intended to defraud Patoka.

Patoka also asserts that her signature was forged on an application for a $300,000 loan in connection with the purchase of the Cloverdale property. (Patoka Dec, ¶ 52 and Exh. G.) The Court agrees that the signature was likely forged. For one thing, it bears little resemblance to Patoka's signature on her declaration; for another, her typewritten name is misspelled under the signature line ("Katrina Patroka" rather than the correct "Kathrina Patoka"), and there is no sign of the letter 'h' in the first name in the signature, suggesting that whoever signed the document thought Patoka's first name was really Katrina. Certainly, forgery is a violation of the law. (Pen. Code § 470.) However, there is no evidence of who committed it. Patoka speculates that it was "Lewis or his romantic partner, Jami [Audelo]." (Patoka Dec ¶ 52.) But Audelo is not a party to this action. Lewis is, but no undisputed evidence suggests that he either committed or ratified this particular violation of the law.

Thus, Lewis's violation of his fiduciary duty of care is not supported by undisputed evidence. However, his violations of the duty of loyalty, discussed above, are sufficient to satisfy the breach element of the cause of action.

3. Damages

Undisputed evidence shows that Patoka made loans to Contrarian in the total amount of $1,225,962.03 (Patoka Dec ¶ 36; SSUF no. 52), broken down as follows:

- $65,400 for the purchase of the Pinot property (SSUF no. 11).
- $590,522.92 for the purchase of the Pinot property (SSUF no. 12).
- $210,850 for renovations to the Pinot property (SSUF nos. 13-34).
- $237,777.11 for the purchase of the Ripley property (SSUF no. 35).
- $121,412 for renovations to the Pinot and Ripley properties (SSUF nos. 36-51).

Undisputed evidence shows that Patoka has been repaid in the total amount of $633,807.69, broken down as follows:

- $250,000 from the proceeds of a loan obtained by Lewis, secured by the Pinot property (Patoka Dec ¶ 39).
- $50,000 from the proceeds of the sale of the Ripley property (Patoka Dec ¶ 45).
- $333,807.69 that Patoka transferred from the Contrarian bank account (Patoka Dec ¶ 61). (This was the subject matter of the now-dismissed original complaint in this matter.)

Therefore, $592,154.34 remains unpaid. (Patoka Dec ¶ 63.)

Patoka declares that her damages also include $73,000.00 in accrued interest on funds she borrowed from Morgan Stanley to fund her loans to Contrarian. (Patoka Dec ¶¶ 44, 62; SSUF nos. 58, 66, 72-75.) As noted above, Patoka has adequately demonstrated that her arrangement with Lewis included the payment of such accrued interest out of the proceeds of the sales of the renovated homes. (Patoka Dec ¶ 14.) However, the Court is concerned that the $73,000.00 figure may be an estimate rather than a precise measure of the accrued interest. One reason for the concern is the very round nature of this number. Another is that while the other components of Patoka's damages are supported by detailed bank records (e.g. Patoka Dec Exhs. B, C, and D), the accrued-interest figure is supported only by Patoka's declaration. As noted above, a witness declaration is sufficient to establish undisputed evidence on summary adjudication. (CCP § 437c(e).) However, "summary judgment may be denied in the discretion of the trial court if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact." (*Ibid.*)

Damages are an element of causes of action for both breach of fiduciary duty and breach of contract. It is well established that a plaintiff cannot obtain summary judgment on a contract claim in an amount of damages to be determined later. (*Paramount Petroleum Co. v. Superior Court* (2014) 227 Cal.App.4th 226, 241.) This is true even where the opposing party fails to file timely opposition. (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239, fn. 2.) The Court interprets these authorities to mean that a mere estimate of damages is insufficient to support summary adjudication of a breach of contract claim, and the Court has no doubt that the same principle applies to the damages element of a breach of fiduciary duty claim.

Accordingly, the Court will continue this hearing in order to permit Patoka to provide a detailed description of how the $73,000.00 figure was arrived at, including documentation in the form of financial records if possible.

B. Issue #2: First Cause of Action for breach of oral agreement

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) With the exception of the accrued-interest component of the damages discussed above, undisputed evidence supports each element.

1. Formation

The contract between Patoka and Lewis was oral, but oral contracts are enforceable if the party seeking enforcement can prove their content. (Civ. Code § 1622.) Patoka's declaration shows that she and Lewis agreed to an arrangement wherein they would purchase, renovate, and sell homes. (Patoka Dec ¶ 10.) Patoka was to "assume the role of lender," clearly meaning that her performance was to consist of supplying the funds needed to purchase the properties. (Patoka Dec ¶ 12.) CCHR (Lewis's sole proprietorship) and Hought were to perform the renovations. (Patoka Dec ¶ 14.) Patoka was to be repaid the principal amount of all her loans in full, with no interest other than the interest she accrued in borrowing the funds. (Patoka Dec ¶ 15.) She was then to receive 25% of the profits on the sale of each property. (*Ibid.*) These declarations are sufficient to support the Court's finding that there was an enforceable oral contract between Patoka and Lewis.

Moreover, the existence of a contract may be inferred from the parties' conduct. (Civ. Code § 1621.) Here, Patoka did, in fact, make funds available to Lewis; Lewis did, in fact, use them to purchase two properties; and Lewis did, in fact, renovate both properties and sell them at a profit. This is not conduct that people typically engage in without an agreement for repayment of the funds in place. Thus, in addition to the contract being proved by Patoka's description of its terms in her declaration, the Court finds that it was implied in fact by Patoka's and Lewis's conduct.
The Court finds that undisputed evidence proves the existence of the contract.

2. Performance

There is no question that Patoka performed the duties required by the contract: as detailed above, she made a total of $1,225,962.03 available for Lewis's use in buying and renovating the Pinot and Ripley properties.

3. Breach

Under her agreement with Lewis, all of Patoka's loans to the LLC were to be repaid in full, along with any interest she had to pay on a line of credit she opened in order to fund the loans. (Patoka Dec, ¶ 15(i).) As detailed above, Lewis repaid some of the loaned funds, but not all of them. He therefore breached the contract.

4. Damages

The discussion of damages above under Issue #1 applies equally to this issue.

C. Issue #3: Second Cause of Action for money had and received

The elements of a claim under the common count of Money Had and Received are (1) that the defendant received money that was intended to be used for the benefit of the plaintiff; (2) that the money was not used for the benefit of the plaintiff; and (3) that the defendant has not returned the money to the plaintiff. (*Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th 1439, 1454; see CACI no. 370.)

As discussed below, each element is supported by undisputed evidence. Accordingly, the Court will grant summary adjudication of the Second Cause of Action. The above discussion of the accrued-interest component of the damages in the First and Fourth Causes of Action does not apply here, since this cause of action seeks only the return of the principal amount of the loans. (MPA at p. 10; SSUF nos. 181, 182.)

1. The funds Patoka loaned to Lewis were intended to be used for Patoka's benefit.

Patoka's declaration establishes that she made a total of $1,225,962.03 available for Lewis's use in buying and renovating the Pinot and Ripley properties. (Patoka Dec ¶ 36; SSUF no. 52.) The money was intended to be used to renovate properties and re-sell them at a profit, which was to benefit Patoka by entitling her to 25% of the profit. (Patoka Dec ¶ 15(ii).)

2. The funds were not used for Patoka's benefit.

Patoka did not receive the expected benefit of providing the funds. If she had, she would have been repaid the full principal amount plus a 25% share in the profits from the sales of the Pinot and Ripley properties. Instead, she has received only a fraction of the principal amount.

Moreover, both Patoka's declaration and Contrarian's bank records establish that Lewis routinely used Contrarian funds for personal expenditures, including for meals, sports memorabilia, and haircuts. (Patoka Dec ¶ 58; Separate Statement of Undisputed Facts ("SSUF") no. 62, pp. 12-14.) Lewis also transferred at least $94,530 from Contrarian's bank account to his own. (SSUF no. 63; Soldis Dec (RJN 7) ¶ 11.) None of that was for Patoka's benefit.

These facts, supported by undisputed evidence, are sufficient to prove the "not for plaintiff's benefit" element of the cause of action.

3. The funds have not been repaid.

The funds have been partially repaid, as discussed above. (Patoka Dec ¶¶ 29, 46, 61.) However, again, undisputed evidence shows that $592,154.34 remains unpaid. (Patoka Dec ¶ 63.)

V. Conclusion

The motion for summary adjudication of the Second Cause of Action is granted. The Court will continue the hearing on this motion to permit Patoka to provide more detailed documentation of the amount of interest she has accrued on the funds she borrowed to loan to Contrarian.

5. 26CV06074, Restaurants 101, Inc. v. Gori

The hearing on the Order to Show Cause Re: Preliminary Injunction is **CONTINUED** to October 28, 2026 at 3:00 p.m. in Department 18. Defendant opposed the OSC on jurisdictional grounds due to the OSC not being personally served on him. Defendant did not oppose it on substantive grounds so as to avoid making a general appearance. Plaintiff has since filed a proof of service of summons showing that Defendant has now been personally served with the summons, complaint and OSC.

Accordingly, the hearing on this OSC is continued in order to afford Defendant an opportunity to respond substantively. Defendant's responsive brief is due no later than October 15, 2026. Plaintiff's reply brief is due no later than October 21, 2026. The temporary restraining order issued September 3, 2026 shall remain in full force and effect until the hearing on this OSC takes place.

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

6. 25CV02184, Smith v. Regal IIC, LLC

Plaintiff's unopposed motion to approve PAGA settlement is **GRANTED**.

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

Analysis:

On June 17, 2025, Plaintiff filed the First Amended Class and Representative Action Complaint, which is the operative complaint in this Action. Plaintiff alleges several Labor Code violations on behalf of himself and similarly aggrieved employees of Defendants Regal III, LLC, and Jackson Family Enterprises, Inc.

Following successful mediation, Plaintiff agreed to dismiss all class claims and allegations and proceed only with Plaintiff's representative claim for civil penalties under PAGA. The class claims were dismissed on June 22, 2026 and only the PAGA claim remains. Plaintiff now seeks approval of the parties' settlement of Plaintiff's PAGA claims. The terms of the settlement are that

Defendants will pay a non-reversionary Maximum Settlement Amount of $212,500.00. Subject to Court approval, the deductions requested from the Maximum Settlement Amount are: $74,375.00 (attorneys' fees); $13,142.75 (litigation costs); $10,000.00 (representative enhancement payment); $4,500.00 (administration costs). The net settlement amount would be $110,482.25. The Net Settlement Amount will be allocated entirely to PAGA civil penalties, with 65% distributed to the LWDA and 35% distributed to Aggrieved Employees. The Aggrieved Employees' share will be distributed automatically on a pro rata basis according to the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

A trial court "shall review and approve any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code § 2699(l)(2); see also *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 ["PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected"].) The court "should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 ("*Moniz*").) "The most important factor (in the fair, adequate and reasonable standard) is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407–408 (as to class actions).)

The trial court reviews the PAGA settlement as a safeguard. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88 [settlement of individual claims did not affect PAGA claims, as those individual claims were not subject to PAGA "safeguards" under Lab. Code § 2699(l)(2)).].) The trial court must review wither the settlement is fair adequate and reasonable, and in doing so considering PAGA's purposes and policies is relevant. (*Moniz, supra,* 72 Cal.App.5th at 77.)

The Court finds that the settlement amount is fair, reasonable, and adequate considering the purposes of PAGA. Regarding the request for attorney's fees in the amount of $74,375.00, Plaintiff has provided a breakdown of the hourly rates and number of hours billed on this matter. While under a typical loadstar analysis, this Court would not approve the hourly rates requested—since they do not align with those typically awarded in this locality—the Court still finds the attorney's fees request to be reasonable based on hourly rates the Court would approve. The Court would approve the following rates:

Paul K. Haines (19 years)	$650
Fletcher W. Schmidt (13 years)	$550
Andrew J. Rowbotham (11 years)	$500
Susan J. Perez (6 years)	$475
Paralegals	$200

Based on the hours expended, as reflected in the chart on page 15 of Plaintiff's opening brief, this would result in a loadstar of $80,372.50. Accordingly, the request of $74,375.00 in fees is reasonable. The Court also finds the requested deductions for litigation costs, settlement administrator fees, and a service award to Plaintiff to be reasonable.

7. <u>26CV03451, Segura v. Singh</u>

Pursuant to CCP section 435(b)(1) and Cal. Rules of Court, Rule 3.1322, Defendants Vinaya Singh ("Vinaya") and Mira Singh ("Mira")(together "Defendants") move to strike the entirety of the complaint filed by Plaintiffs Kristian J. Segura and Jesus Elizabeth Garcia Gamez ("Plaintiffs") on the grounds that it violates Cal. Rules of Court, Rule 2.112(3) and (4). In the event this court finds leave to amend should be granted, Defendants move to strike portions of the complaint on the grounds that they are "irrelevant, false, or improper matter" under CCP section 436(a).

I. Complaint

On May 29, 2026, Plaintiffs filed their complaint for: (1) Declaratory Relief; (2) Injunctive Relief; and (3) Violation of Sonoma County Ordinance No. 6496. Plaintiffs allege they are tenants in possession of residential premises located at 1990 Alan Drive in Penngrove ("Subject Property"). Vinaya is alleged to be the property manager and Mira the owner of the Subject Property.

Plaintiffs allege they commenced occupancy of the Subject Property on June 1, 2025, and have remained in possession of the premises since then. They allege they have paid rent and complied with tenancy obligations. Despite this, Plaintiffs allege on or about February 27, 2026, Defendants gave Plaintiffs notice of termination of the tenancy. The basis for the termination was for an owner-occupancy. On or about May 1, 2026, Defendants served Plaintiffs with a Notice of Non-Renewal of Lease which stated it superseded and rescinded all prior termination notices.

Plaintiffs allege that Defendants failed to comply with Sonoma County Ordinance No. 6496, including but not limited to notice requirements, reporting requirements, and relocation-assistance provisions.

Plaintiffs further allege the existence of a controversy over whether: (1) Sonoma County Ordinance No. 6496 applies to the tenancy; (2) whether Defendants complied with that code section; (3) whether relocation assistance was required; (3) whether the February 27, 2026, notice remains enforceable; (4) whether the April 30, 2026, notice superseded prior notices; and (5) whether Defendants may lawfully recover possession without further compliance with applicable law.

II. Cal. Rules of Court, Rule 2.112(3) and (4)

Cal. Rules of Court, Rule 2.113(3) requires each cause of action to separately state the party asserting it if more than one party is represented on the pleading (e.g. "by plaintiff Jones"). Subsection (4) requires each cause of action to separately state the party or parties to whom it is directed (e.g., "against defendant Smith").

Plaintiffs' complaint does not comply with this rule. However, as this is easily remedied, LEAVE TO AMEND will be granted to allow Plaintiffs to make this correction.

III. Exhibit 9

Defendants argue Plaintiffs' Exhibit 9 should be stricken as irrelevant and improper.

The motion is GRANTED WITHOUT LEAVE TO AMEND as to Exhibit 9, including Plaintiffs' Notice of Errata and Lodging of Exhibit 9 to the Complaint. After the redaction, only defendant Vinaya's name and photo are left. His photograph is irrelevant to this matter.

IV. Paragraphs 3 – 4

Paragraph 3 of the complaint contains a typographical error as it alleges that defendant Vinaya is informed and believes, and alleges, that he is an individual residing in Sonoma County, California, and has acted as landlord, property manager, owner representative, and agent concerning the subject tenancy. It appears Plaintiffs intended to allege that *they* are informed and believe these statements about defendant Vinaya.

Similarly, Plaintiffs allege at paragraph 4 that defendant Mira is informed and believes, and thereupon alleges, that she is the owner of the subject property and participated in decisions concerning the tenancy. Again, it appears Plaintiffs intended to allege that *they* are informed and believe these things about defendant Mira.

In addition, Defendants argue that Plaintiffs cannot allege this information on information and belief. They argue that it is improper to allege on information and belief when the pleader has "actual or presumed knowledge of the facts." It appears Defendants argue this with respect to the pleading as is—wherein they themselves would presumably know if they are the owner and property manager of the Subject Property. This issue is moot as the motion as to this paragraph was already granted.

The motion as to paragraphs 3 and 4 is GRANTED WITH LEAVE TO AMEND.

V. Opposition

Defendants argue that the motion should be denied because the Notice of Motion does not contain the information for the date and time of the hearing. Plaintiffs have provided declarations that they received a copy with no date and time. Often the practice is to serve the motion without a date and time and then an amended notice of motion once the hearing date is scheduled by the court clerk. The Notice of Motion in the file contains the hearing date and the proof of service shows service of that document. Plaintiffs have timely filed opposition. They have had an opportunity to be heard. Where notice of a motion is insufficient, this court's usual practice is not to deny a motion but to continue it to a later hearing date. Here, Plaintiffs will obtain no benefit from continuing this motion as, except with respect to Vinaya's driver's license, leave to amend is being granted.

VI. Conclusion

The motion is GRANTED. Leave to amend granted to comply with Cal. Rules of Court, Rule 3.112(3) and (4) and to amend paragraphs 3 and 4. The motion is GRANTED WITHOUT LEAVE TO AMEND as to Exhibit 9, including its redacted form.

Defendants' 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.

8. MCV-257696, Midland Credit Management Inc. v. Verbish

Defendant's motion to set aside default judgment is **DENIED**.

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

Analysis:

This Court entered default judgment against Defendant on June 28, 2022. Nearly four years later, on March 4, 2026, Defendant filed a motion to vacate the judgment on the basis of not having any knowledge of this case until she received an abstract of judgment in the mail on March 3, 2026. That motion came on for hearing on June 10, 2026, wherein the Court denied the motion. Though Defendant had not cited any legal authority supporting the motion, the Court analyzed it under CCP §§ 473 and 473.5 and found it to be without merit. The Court found that Plaintiff filed an adequate proof of service showing proper substitute service upon Defendant. The Court also found the motion to be untimely.

The day after the motion was denied, Defendant filed the instant motion that seeks the same relief based on the same argument—that Defendant did not have knowledge of this lawsuit until March of 2024. However, now Defendant specifically cites to CCP §§ 473(d) and 473.5.

The Court will not reiterate the points already stated in the Court's previous ruling, which can be found in the June 10, 2026, Minute Order, however, the Court will address the new citation to CCP § 473(d).

CCP § 473(d) allows the Court to set aside a void judgment, which may be void due to invalid service of summons resulting in a lack of personal jurisdiction. Defendant represents that she was in a residential treatment program during the time of the claimed service. She submits a letter from a parent educator from that program to support this contention. However, the letter, which was drafted on June 14, 2021, states that Defendant was in the residential treatment program from December 29, 2020, through April 26, 2021. The service of summons states that substitute service was made on February 8, 2022, and mail service was made on February 9, 2022. This was after Defendant completed the residential treatment program, according to the letter. Accordingly, Defendant has failed to show invalid service of summons. The motion is denied.

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