January 10, 2025
Dept. 9
Tentative Rulings

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| **1.** | **24CV2522** | **MATTER OF SLADE** |
| **Minor's Compromise** | | |

On November 13, 2024, Jennifer Slade, the mother of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on November 13, 2024.

* * *

This is a Petition to compromise a minor's claim. The Petition states the minor sustained injuries to his right wrist and collarbone after being struck by a vehicle while riding his bike. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $20,309.77.

The Petition states the minor incurred $5,743.71 in medical and out-of-pocket expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

With respect to the $14,566.06 due to the minor, the Petition requests that they be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The Court intends to grant the Petition. <u>However, the minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.</u>

**TENTATIVE RULING #1:**

**APPEARANCES REQUIRED ON FRIDAY, JANUARY 10, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

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| **2.** | **23CV0990** | **BARRAGAN et al v. PRASAD et al** |
| **Motion to be Relieved** | | |

Counsel for the Plaintiff, Jaime Ruben Barragan, has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown of the attorney-client relationship making it impossible to continue as attorney of record.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on counsel for Defendant was filed on October 24, 2024. There has been no service on Plaintiff, despite hiring a public investigator to locate Plaintiff's most current address.

There is a Settlement Conference scheduled on April 2, 2025, which is not listed in the proposed Order. There is an Issues Conference on May 16, 2025, and Trial is set for May 27, 2025, but neither are listed on the Notice, Declaration, or Order. California Rules of Court, Rule 3.1362(e).

**TENTATIVE RULING #2:**

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| **3.** | **24CV0345** | **COTTEN et al v. FORD MOTOR COMPANY et al** |
| **Motion to Compel** | | |

On July 18, 2024, Plaintiffs served 298 discovery demands, including 140 Requests for Production of Documents. Defendants responded on September 19, 2024 and verified the responses on September 25, 2024. On October 3, 2024 Plaintiffs served a 35-page meet-and-confer letter, which Defendants responded to on October 30, 2024. On November 4, 2024, Plaintiff sent a lengthy email and then proceeded to file this Motion on November 8, 2024.

"A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." Code Civ. Proc. § 2016.040. In order to properly "meet and confer" with respect to a discovery dispute:

> The parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions. Only after all cards have been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses of its position in light of all available information, can there be a "sincere effort" to resolve the matter.

*Townsend v. Superior Ct.,* 61 Cal. App. 4th 1431, 1435 (1998). "[A]rgument is not the same as informal negotiation … attempting informal resolution means more than the mere attempt by the discovery proponent 'to persuade the objector of the error of his ways.'" *Clement v. Alegre*, 177 Cal. App. 4th 1277, 1294 (2009). When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden. *Obregon v. Superior Ct.,* Cal. App. 4th 424, 431 (1998).

The Court finds that sufficient meet and confer efforts were not undertaken prior to filing this Motion.

**TENTATIVE RULING #3:**

**APPEARANCES REQUIRED ON FRIDAY, JANAURY 10, 2025 AT 8:30 AM IN DEPARTMENT NINE.**

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| **4.** | **24CV0053** | **GRAY v. ZBS LAW, LLP** |
| **Motion to Compel** | | |

Plaintiff brings this Motion to Compel, arguing that the Court approved his Bill of Particulars, which requested specific documents from Defendant that have not been provided. The Bill of Particulars was filed on July 23, 2024. There was no action taken by the Court in regards to Plaintiff's Bill of Particulars.

The Motion filed by Plaintiff cites California Code of Civil Procedure § 2031.310, which does not govern Bill of Particulars. Plaintiff does not allege any discovery, specifically, Requests for Production of Documents, were formally served on Defendant.

There is no discovery which the Court can compel responses to.

**TENTATIVE RULING #4:**

**MOTION TO COMPEL DENIED.**

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| **5.** | **21CV0356** | **POTOSKY REVOCABLE LIVING TRUST v. BELFORD ESTATES HOMEOWNERS' ASSOCIATION** |
| **Motion for Leave** | | |

Plaintiff, the Potosky Revocable Living Trust, moves this Court for an order to file a second amended Complaint[1] to add Rick Locarnini ("Locarnini"), President of the Belford Estates Homeowners' Association ("HOA"). Plaintiff includes the proposed second amended Complaint ("SAC").

This Court "may, in the furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding." Cal. Code of Civil Procedure §473. It is established judicial policy to resolve all disputes between the parties on their merits, and to liberally allow amendments to the pleadings to put all disputes at issue at the time of trial. See *Vogel v. Thrifty Drug Co.* (1954) 43 Cal 2d. 184, 188. ("it is a basic rule of pleading in this state that amendments shall be liberally allowed so that all issues material to the just and complete disposition of a cause may be expeditiously litigated.") See, *Wilson v. Turner Resilient Floors* (1949) 89 Cal.App.2d 589; *In re Herbst's Estate* (1938) 26 Cal.App.2d 249.

Plaintiff argues that due to the stage of this case, no party will be prejudiced by the proposed Amendment.

Defendant HOA opposes, arguing that Plaintiff's request to file a Third Amended Complaint[2] ("TAC") continues to procedurally fail California Rules of Court ("CRC") 3.1324, and that granting leave to file the amended Complaint will be unduly prejudicial to Defendants who have been preparing for mediation and trial without Locarnini as a named Defendant.

Defendant argues that Plaintiff's TAC contains additions and deletions of allegations in the SAC that are not specified in Mr. Papez's Declaration (or anywhere in the Amended Motion) by page, paragraph, and line number, all in violation of CRC Section 3.1324(a). Defendant argues that the six instances identified in the Court's December ruling need to be identified in the Amended Motion in addition to the previously four declared changes in order to be compliant with CRC 3.1324(a). Even then, Defendant argues it is possible that there are more alterations to the TAC from the SAC that this Court may have overlooked, and those such alterations must be declared if any exist.

[1] The Memorandum of Points and Authority states: "Plaintiff, the Potosky Revocable Living Trust, moves this court for an order to file a *first* amended complaint. A *second* amended complaint is necessary…" On Page 3, the final sentence again requests leave to file a First Amended Complaint, but the footer notes "Plaintiff's Amended Notice of Motion and Motion to File Second Amended Complaint."

[2] Defendant argues that after the Court's December ruling, the Complaint at issue now is the Third Amended Complaint.

Next, Defendant argues that the judge has discretion to deny leave to amend when the party seeking the amendment has been dilatory and the delay has prejudiced the opposing party. See *Hirsa v. Sup. Ct. (Vickers)* (1981) 14 118 CA3d 486, 490, 173 CR 418, 420. Prejudice exists where the amendment would result in a delay of trial, along with loss of critical evidence, added costs of preparation, increased burden of discovery, etc. *Magpali v. Farmers Group, Inc.* (1996) 48 CA4th 471, 486-488, 55 CR2d 225, 236-237; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 CA4th 1332, 1345, 119 CR3d 253, 263; *Fisher v. Larsen* (1982) 138 CA3d 627, 649, 188 CR 216, 232 -- leave to amend properly denied where Plaintiff knew for over five (5) months claims had not been properly pleaded and took no action to amend until after summary judgment granted against it.

Defendant argues that as the Court previously noted in the December ruling, Plaintiff filed substantially the same motion to add the same party as its August 2023 motion that was denied. Plaintiff then waited nearly 16 months to bring the same motion to add the same party. Defendant argues that moreover, Plaintiff knew for over twenty-four (24) months of the facts and circumstances alleged against potential Defendant Locarnini in the proposed TAC. Defendant argues that adding Locarnini at this stage would result in another delay of trial, added cost of preparation for both parties, and increased discovery. Trial has already been continued twice.

The Court agrees that Plaintiff has had sufficient chances to amend its Complaint, and continues to submit substantially the same motion with the same defects. Based on the fact that trial has already been continued twice and would almost certainly need to be delayed a third time, and Plaintiff asserts no explanation as to its delay in bringing this motion again, the Motion for Leave is denied.

**TENTATIVE RULING #5:**

1. **MOTION FOR LEAVE DENIED WITH PREJUDICE.**

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| **6.** | **24CV1405** | **WELLS FARGO BANK v. FIEDLER** |
| **Motion to Deem Matters Admitted** | | |

The Notice does not comply with Local Rule 7.10.05(C).

Plaintiff, Wells Fargo Bank, N.A., served Defendant, Andrew Fiedler, with Requests for Admissions, Set One, by mail on September 6, 2024. The responses were due 35-days later but at the time of filing the Motion, no responses have been served upon Plaintiff.

Pursuant to California Code of Civil Procedure § 2033.280 et seq. Plaintiff requests that the Court grants its Motion to deem the matters admitted.

Plaintiff did not make any meet and confer efforts. The Court expects parties to attempt to resolve discovery issues informally before involving the Court, especially considering that Defendant is represented by counsel.

**TENTATIVE RULING #6:**

**APPEARANCES REQUIRED ON FRIDAY, JANUARY 10, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

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| 7. | 23CV0126 | KAKAR et al v. DAVIS et al |
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| **Demurrer and Motion to Strike** | | |

Defendant, John Davis, ("Defendant") brings this Demurrer and Motion to Strike Amida Kakar ("Kakar") and Habib Rahmany's ("Rahmany")(collectively Plaintiffs) First Amended Complaint ("FAC"). Plaintiffs have not opposed either the Demurrer or the Motion to Strike.

This case involves allegations of fraud, misrepresentation, false promise and violation of a written contract, and breach of a fiduciary duty. Plaintiffs filed the Complaint on January 27, 2023. Defendant filed a Demurrer and Motion to Strike. At the hearing on February 9, 2024, the Court sustained the Demurrer as to all seven causes of action, with leave to file an Amended Complaint within 10 days. The FAC was filed on March 4, 2024.

**Standard of Review - Demurrer**

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

The FAC includes 7 causes of action: (1) Intentional Misrepresentation – Fraud; (2) Breach of Contract; (3) Concealment; (4) False Promise – Fraud; (5) Violation of Business and Professions Code § 17200; (6) Breach of a Fiduciary Duty; and (7) Intentional Interference of a Contract.

Defendant demurs to all causes of action on the following grounds:

1. All causes of action fail to properly identify the relevant plaintiffs and defendants. California Code of Civil Procedure ("CCP") § 430.10(e)-(f).
2. The first cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because no intentional misrepresentation is alleged, and the FAC fails to allege fraud with particularity.
3. The second cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because no breach of contract is alleged, and it alleges contradictory legal theories within the singular cause of action.
4. The third cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because a fiduciary relationship between Plaintiffs and Defendant is not properly alleged.

5. The fourth cause of action fails to state facts sufficient to constitute a cause of action.
6. The fifth cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because no violation is alleged, and it fails to allege the violation(s) with reasonable particularity.
7. The sixth cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because it alleges contradictory legal theories within a singular cause of action.
8. The seventh cause of action fails to state facts sufficient to constitute a cause of action and is necessarily uncertain because no contract is alleged.

**Requests for Judicial Notice**

There is no request for judicial notice.

**Meet and Confer Requirement**

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Defense counsel indicates one instance of attempting to meet and confer via email to Plaintiffs' counsel without a response. The Court does not find this sufficient, nor does the Court find that any efforts in person or by telephone were attempted. However, considering that the Demurrer was filed on April 3, 2024, and there has been no opposition by Plaintiffs, the Court will address the pleadings.

**Argument**

Defendant starts by arguing that each and every cause of action fails for uncertainty because it does not specify which Plaintiffs bring each cause of action, and against which Defendant each cause of action is brought. CCP §430.10(f). There are two Plaintiffs and three Defendants and without designating which Plaintiff(s) bring the cause of action against which Defendant(s) the FAC is uncertain. This was an issue in the original Complaint, which Plaintiffs failed to cure in the FAC.

First: Intentional Misrepresentation

The elements of an intentional misrepresentation cause of action as expressed in the Judicial Council of California Civil Jury Instructions ("CACI") 1900 are as follows:

1. That [defendant] represented to [plaintiff] that a fact was true;
2. That [defendant]'s representation was false;
3. That [defendant] knew that the representation was false when [they] made it, or that [they] made the representation recklessly and without regard for its truth;

4. That [defendant] intended that [plaintiff] rely on the representation;
5. That [plaintiff] reasonably relied on [defendants] representation;
6. That [plaintiff was harmed; and
7. That [plaintiff]'s reliance on [defendant]'s representation was a substantial factor in causing [their] harm.

Defendants argue that the FAC fails to identify any allegedly false statement. Although there are broad references to statements and representations made by Defendants in the Complaint, none of them are sufficient to meet the pleading requirement of identifying a fact represented as true that was in fact false. While Plaintiffs have added additional information to the FAC, there are still no allegations particular enough to meet the pleading requirement.

Paragraph 9 of the FAC alleges that:

> On January 30, 2020, Defendants informed Plaintiffs in writing that Plaintiffs' funds in Ethoex would not be paid by their due date in February of that year; Plaintiff were informed by persons within Defendants' company and companies that the company itself and other executives had illicitly and without Plaintiffs' knowledge mismanaged funds and caused the company to collapse. Defendants, and each of them, offered to Plaintiffs in writing that, in return for Plaintiffs not filing litigation against them and their new company (Entexs) Plaintiffs would be given value and funds in Defendants' new company (Entexs) to pay back Plaintiff 1 by $350,000 and Plaintiff 2 by $100,000 respectively.

According to the allegations of the FAC and the documents attached to it, Paragraph 9 describes a true statement.

In Paragraph 13 of the FAC Plaintiffs allege that Defendants "made false claims":

> On or about September – October 2021 Plaintiffs discovered that Defendants had made the above false claims starting in and continuing through January 30th 2020, and through to October 30th 2021, which Defendants then knew were false, which Plaintiffs did not know and could not have reasonably known to be false, to which Defendants intended Plaintiffs to be relied upon herein. Plaintiffs relied upon the Defendants false claims.

This paragraph vaguely describes claims over a period of nearly two years, some of which were before the Plaintiffs entered into the Agreement, and some of which took place after the Agreement was executed. No specific representation that any "fact was true" is identified that can support the First Cause of Action.

Paragraph 17 of the FAC also references representations made by Defendants:

> In and during the above time, Defendants claimed that the money owed to Plaintiff would be paid later, and payments would be forthcoming in 2023, with partial payments to begin then and be paid in full by 2023.

Paragraph 17 describes the terms of the Agreement, which plainly and expressly states that this payment 'obligation' is contingent on the profitability of the company, which is not guaranteed, and that the schedule for payment is dependent on the number of "participants" who sign the same Agreement with the company. Agreement, ¶(1)(a)(i). Accordingly, this statement is also true.

Second: Breach of Contract

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.

The alleged breach is set forth in paragraph 60 to the FAC: "Defendants informed Plaintiffs they would not pay the money owed to them timely and rescinded the contract in 2022. . . ." This allegation is not sufficient to establish a breach of the Agreement, which expressly makes payments contingent on company profitability, which is "speculative and not guaranteed".

The Second Cause of Action also references a claim for promissory estoppel. The elements of a promissory estoppel claim are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance." *US Ecology, Inc. v. State of California* (2005) 129 Cal. App. 4th 887, 901, quoting (*Laks v. Coast Federal Savings & Loan Assn.* (1976) 60 Cal.App.3d 885, 890. Even if this separate basis for recovery could be included within the Second Cause of Action for breach of contract, the FAC does not allege facts sufficient in support of this equitable claim, where it simply states that "[t]here was a clear offer to contract made, the Plaintiffs reasonably relied upon the offer and the Plaintiffs suffered the loss." FAC, ¶63.

Third: Concealment

The elements of a cause of action for fraud based on concealment are: "'(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact,

the plaintiff must have sustained damage." *Kaldenbach v. Mut. of Omaha Life Ins. Co.* (2009) 178 Cal. App. 4th 830, 850, citing *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 665–666.

In this case, the FAC fails to allege any duty to the Plaintiffs. Although the FAC references a fiduciary duty, it does not allege any facts that would establish such a duty on the part of the Defendants. "The mere placing of a trust in another person does not create a fiduciary relationship." *Zumbrun v. Univ. of S. California,* 25 Cal. App. 3d 1, 13 (Ct. App. 1972); " *Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC* (2007) 158 Cal. App. 4th 226, 246. "[T]here is not a fiduciary relation between the promisor or promisee and the beneficiary of a contract." Restatement (Second) of Trusts § 14 (1959).

Fourth: False Promise

A claim of false promise is grounded in Civil Code § 1710(4): a promise made without any intention of performing it." The claim is also expressed in CACI 1902, which additionally describes the plaintiff's reliance on the promise, the defendant's failure to perform the promised act that the resulting harm to the plaintiff.

The FAC does not allege any actionable promise. The written Agreement attached to the FAC indicates that the payment obligation is speculative and not guaranteed. This statement of the nature of the Agreement is not only a promise of repayment, it clearly prevents any reasonable reliance of repayment by the Plaintiffs.

Fifth: Violation of Business and Professions Code § 17200

The Unfair Business Practices Act defines "unfair competition" to include any "unlawful, unfair or fraudulent business practice." Business and Professions Code § 17200. "[T]o state a claim under the act one need not plead and prove the elements of a tort. Instead, one need only show that "members of the public are likely to be deceived." *Bank of the W. v. Superior Ct.* (1992) 2 Cal. 4th 1254, 1267, 833, quoting *Chern v. Bank of America,* 15 Cal.3d 866, 876.

However, in general a Complaint is required to allege facts with a certain factual specificity. In determining the merits of a demurrer, "[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591.

In this case, the FAC at ¶93 alleges:

> Defendants had a fraudulent, and deceptive business practice of seeking investments and loans under false pretenses, and instead misusing funds outside the bounds of their corporate authority and authorization. Their presentation of what their business purportedly was will be shown to have existed without any truth behind it in order to

receive money from individuals for the unjust enrichment and unauthorized use by Defendants.

There may or may not be actionable business practices underlying the Defendants conduct in first inducing Plaintiffs to loan money to Ethoex and subsequently convincing Plaintiffs to waive all claims for Defendants' failure to pay the debt in return for the "Reward" of a speculative future payment from hypothetical profits of Entexs. If there were, they cannot be understood from the vague and conclusory statements contained in the FAC.

Sixth: Breach of a Fiduciary Duty

As discussed above, the FAC does not allege the basis of any fiduciary duty between the Defendants and the Plaintiffs.

Seventh: Intentional Interference of a Contract

> In order to state a cause of action for intentional interference with contract, a plaintiff must show: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, 270 Cal.Rptr. 1, 791 P.2d 587; *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1603, 92 Cal.Rptr.3d 422.)

*Winchester Mystery House, LLC v. Glob. Asylum, Inc.* (2012) 210 Cal. App. 4th 579, 596.

First, the FAC alleges a contract between Plaintiffs and third party EthoEx, which are promissory notes for repayment of stated amounts. Complaint ¶113; Attachment C.

Second, Defendant Davis at least, if not the corporate Defendant Entexs or Defendant Ali Rashid who was not a party to the promissory notes, was aware of the promissory notes, because he executed them as Secretary of the corporation Ethoex.

The third element requires allegations of intentional acts by Defendant, which are contained in paragraphs 115-117 of the FAC. However, by the express terms of Attachment A to the Complaint, the Plaintiff Kakar only, not Plaintiff Rahmany, released Entexs, John Davis, and Ali Rashid, as parties to that Agreement "from any and all demands, costs, expenses, liabilities, actions, causes of action, and/or claims or damages, of any kind or nature, based on, related to, arising out of, or in connection with any matter, fact, or thing occurring or accruing before the date of the execution of this Agreement, . . . "

Here the identities of the multiple parties interfere with the cohesion of the cause of action. Davis may have been aware of the promissory note but not Rashid. Plaintiff Kakar may have waived all claims against Davis and Rashid, but not Plaintiff Rahmany. The FAC alleges that

"Defendants" misused and misappropriated funds, Complaint ¶115, and later that "Defendant" misappropriated and misused funds of Ethoex. Complaint ¶116.

Further, the damages alleged are the inability of Ethoex to repay the promissory notes to Plaintiffs, but Plaintiff Kakar at least, elected to forego enforcing his right to payment in return for an opportunity to re-invest the same funds in Entexs, which Agreement was executed six months after the promissory note was due.

These inconsistencies and lack of clarity compound to the point that this section of the FAC fails to state facts sufficient to sustain a cause of action.

Plaintiffs have not corrected the defects identified in previous ruling and Plaintiffs have the burden of showing that an amendment would cure the defect. *Jensen v. Home Depot, Inc.* (2018) 24 Cal.App.5th 92; *Bonta v. Friedman* (2001) 91 Cal.App.4th 819. Due to the minimal changes between the Complaint and the FAC, after the first Demurrer was sustained as to all seven causes of action, and the lack of an opposition by Plaintiffs to the Demurrer, leave to amend is denied.

Motion to Strike

Defendant moves to strike certain provisions[1] of the Complaint pursuant to Code of Civil Procedure § 436(a) and 437(a).[2]

However, given that the court will sustain Defendants' demurrer to the Complaint as to all causes of action, the motion to strike is moot. Nevertheless, the court would appreciate

[1] Paragraph 12 (page 4:4-8) irrelevant and improper
Paragraph 38 (page 8-9) irrelevant and improper
Paragraph 58 (page 10:27-28) irrelevant and improper
Paragraph 63 (page 11:7-9) false and improper
Paragraph 99 (page 14:2-3) irrelevant and improper
Paragraph 107 (page 14:16-18) irrelevant and improper
Section C (page 16:5) these damages are unavailable for Plaintiffs' claims
Section D (page 16:6) attorney's fees and costs are unavailable for Plaintiffs' claims
Section E (page 16:7) exemplary damages are unavailable for Plaintiffs' claims
Section H (page 16:10-12) injunctive or equitable relief is unavailable for Plaintiff's claims

[2] Code of Civil Procedure § 436(a) provides:

> The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:
> (a) Strikeout any irrelevant, false, or improper matter inserted in any pleading.

Code of Civil Procedure § 437(a) provides:

> (a) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.

Plaintiffs careful review the issues raised in Defendants' motion to strike, especially with respect to damages claims that may not be supported by the causes of action, should they elect to file an amended Complaint.

**TENTATIVE RULING #7:**

1. **DEMURRER SUSTAINED AS TO ALL SEVEN CAUSES OF ACTION, WITHOUT LEAVE TO AMEND.**
2. **DEFENDANT'S MOTION TO STRIKE IS MOOT.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

**NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.**

**IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

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| **8.** | **24CV0558** | **SECURITY NATIONAL INS. CO. v. D. ROBERTS ELECTRIC** |
| **Motion to Strike** | | |

Plaintiff, Security National Insurance Company, a Delaware corporation, brings this Motion to Strike the Answer filed by D. Roberts Electric, Inc., a California corporation. On March 21, 2024, Plaintiff filed a Complaint against Defendant for breach of contract and common counts. On July 29, 2024, pro per Defendant filed an Answer.

Plaintiff argues that it is well established that a corporation may not appear in propria persona.

> …under a long-standing common law rule of procedure, a corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record.

*CLD Constuction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145, citing *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101-1103.

Plaintiff argues that under California Code of Civil Procedure § 436, that the Court may strike Defendant's Answer since it was not filed in conformity with the laws of the state and is therefore void.

**TENTATIVE RULING #8:**

**MOTION TO STRIKE DEFENDANT'S ANSWER IS GRANTED.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

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| **9.** | **PC20210238** | **AKIN v. MARCHINI** |
| **Motion for Attorney's Fees** | | |

On October 17, 2024, Defendants filed a motion for attorney's fees and costs incurred in clearing the cloud on the title, which the court found in its oral decision was slandered by Plaintiff. At the hearing on November 1, 2024, the court continued the matter to January 10, 2025 as the court had yet to complete its Statement of Decision and deemed it appropriate to resolve that issue first. The court also on its own motion added the issue of attorney's fees and costs related to Plaintiff's denials to Defendants' request for admissions served in September of 2022.

The Statement of Decision was not completed until December 20, 2024, the same day as the deadline for Plaintiff to file a substantive opposition to the motion. At the November 1, 2024 hearing, the court indicated that the deadline for an opposition would remain December 20, 2024 even if the court had not completed its Statement of Decision by then. Particularly, the court stated that at minimum it could address the attorney's fees and costs request as to the request for admissions.

On January 6, 2025, Plaintiff filed an objection to the Statement of Decision. While the court never indicated that its Statement of Decision was intended to be a tentative Statement of Decision subject to an objection, the court notes that Plaintiff did state at the November 1, 2024 hearing that it might file an objection within 15 days after the Statement of Decision was issued. In the interest of fairness, the court will review the objection and determine whether it changes the content of the Statement of Decision.

It also is not clear based on Defendants' October 25, 2024 filing whether they have withdrawn their request for fees and costs related to the request of admissions. The court orders the parties to appear to determine an appropriate course of action to resolve these issues.

**TENTATIVE RULING #8:**

**APPEARANCES REQUIRED ON FRIDAY, JANAURY 10, 2025 AT 8:30 AM IN DEPARTMENT NINE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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