

October 9, 2026, Civil Law & Motion Tentative Rulings

1. CL0001998 Synchrony Bank vs. Kyle J. Spingola

No appearances are required. Plaintiff Synchrony Bank seemingly reserved this date for the filing of a motion for judgment. No motion has been noticed for this date. Plaintiff noticed a motion for judgment pursuant to Defendant's default for hearing on December 4, 2026. That date is confirmed.

2. CL0002789 Masters Team Mortgage vs. Ronald Pitts, et al.

Plaintiff Masters Team Mortgage's request for relief under Code of Civil Procedure section 473(b) is granted; its motion for reconsideration of the July 21, 2026, discovery order of Judge Hardcastle under Code of Civil Procedure section 1008(b) is denied as moot.

Relief Under Code of Civil Procedure § 473(b)

Plaintiff argues it failed to present evidence of the proof of service of the discovery responses before the July 17, 2026 hearing due to its counsel's calendaring error, mistake, or excusable neglect, and thus relief pursuant to Code of Civil Procedure section 473(b) is warranted. The Court agrees.

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Code Civ. Proc. § 473(b). The party or the legal representative must seek such relief "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." Code Civ. Proc. § 473(b). The "other proceedings" language of the section 473 generally applies to discovery demands. *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1106.

As a preliminary matter, Defendants have filed no opposition to the motion; as such, the Court deems Defendants' failure to oppose the motion as consent to the granting of the same. See Cal. Rules of Court, rule 8.54(c) ("failure to oppose a motion may be deemed a consent to the granting of the motion."); see, e.g., *Amato v. Downs* (2022) 78 Cal.App.5th 435, 440, n.3 (unopposed motion can be granted on that basis, citing rule 8.54(c)).

Turning to the merits, on July 21, 2026, Judge Hardcastle granted Defendants' unopposed motion to compel Form Interrogatories ("FIs") and \$1000.00 of sanctions under Code of Civil Procedure section 177.5. In fact, per Plaintiff's Counsel, Plaintiff had already served verified responses to the FIs on February 11, 2026, well before the hearing. Moreover, Plaintiff's counsel declares no opposition to the motion was filed and no appearance was made at the hearing because the handling attorney (who has departed the firm) did not calendar the matter on the firm's calendar and, as a result of that mistake, counsel did not timely prepare and file opposition papers or appear at the hearing. Rambarran Decl., ¶¶ 7-8. Counsel also declares that inadvertence or excusable neglect were responsible for the failure to ensure all dates on prior counsel's cases were properly calendared upon his departure. Rambarran Decl., ¶ 10.

Under these circumstances, relief is warranted. The July 21, 2026, order of Judge Hardcastle is vacated in its entirety, including sanctions.

The request for reconsideration under Code of Civil Procedure section 1008(b) is denied as moot.

3. CU0001813 USA Bath California Remodeling, Inc. vs. David Sweat

Plaintiff USA Bath California Remodeling, Inc.’s motion for attorney’s fees following entry of judgment is granted in part. The Court awards Plaintiff \$81,060.00 in fees.

Legal Standard

“California follows the ‘American rule,’ under which each party to a lawsuit ordinarily must pay his or her own attorney fees.” *Musaelian v. Adams* (2009) 45 Cal.4th 512, 516. “[A] court has no discretion to award costs not statutorily authorized.” *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.

However, attorneys’ fees are allowable as costs if authorized by “contract,” “statute,” or “law.” Code Civ. Proc. § 1033.5(a)(10)(A)-(C).

“In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.” Civ. Code § 1717(a).

Analysis

As a preliminary matter, Defendant has filed no opposition to the motion; as such, the Court deems Defendant’s failure to oppose the motion as consent to the granting of the same. *See* Cal. Rules of Court, rule 8.54(c) (“failure to oppose a motion may be deemed a consent to the granting of the motion.”); *see, e.g., Amato v. Downs* (2022) 78 Cal.App.5th 435, 440, n.3 (unopposed motion can be granted on that basis, citing rule 8.54(c)).

Turning to the merits, it is not disputed that Plaintiff is the prevailing party and that it is entitled to contractual attorneys’ fees. *See* Koegel Decl., Exs. A, C. Appropriate fees, thus, must be determined.

[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ The reasonable hourly rate is that prevailing in the community for similar work. The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. Such an approach anchors the trial court’s analysis to an objective

determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

PLCM Group v. Drexler (2000) 22 Cal.4th 1084, 1095 (citations omitted).

“[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous.” *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.

“[T]rial courts must carefully review attorney documentation of hours expended” in assessing reasonable and necessary attorney fees. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. “The ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ” *Ibid.* “ ‘[A] reasonable hourly rate is the product of a multiplicity of factors . . . the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.’ ” *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1003–1004.

In the declaration of Benjamin D. Koegel in support of the motion, Plaintiff requests costs as follows:

- Mr. Koegel: 169.3 hours @ \$450/hour
- Ms. Martinez: 86.2 hours @ \$325/hour
- Law Clerk: 1.7 hours @ \$150/hour

The Court has reviewed the declaration of counsel Koegel in connection with the request for fees as well as the underlying briefing. This action was highly contested, involved multiple legal theories, involved a cross-complaint, and required the work of skilled counsel during a multi-day trial. The Court is satisfied the time spent by both counsel Koegel and Martinez, as well as the law clerk, was reasonable. The Court, cognizant of the prevailing attorney's fees in this county for work of this nature, finds that counsel Koegel is entitled to compensation at a reasonable rate of \$350.00 per hour and counsel Martinez is entitled to compensation at a reasonable rate of \$250.00 per hour. The law clerk is entitled to reasonable compensation at a rate of \$150.00 per hour. Thus, The Court awards as follows:

Koegel Fees: 169.3 hours @ \$350/hour=\$59,255.00
Christensen Fees: 86.2 hours @ \$250/hour=\$21,550.00
Law Clerk Fees: 1.7 hours @ \$150/hour=\$255.00
Total Fees: \$81,060.00

In sum, the Court grants the requested fees, in part, in the total amount of \$81,060.00.

4. CU0002197 American Express National Bank vs. Dion Reif

Defendant Dion Reif's motion to set aside entry of default and default judgment is granted.

Legal Standard

Under the discretionary provisions of Code of Civil Procedure section 473(b), the Court “may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” To obtain relief under this provision, the application for relief must be made “within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding.” *Ibid.* This type of application must also be “accompanied by a copy of the answer or other pleading proposed to be filed therein.” *Ibid.* Because the law favors disposing of cases on their merits, any doubts in granting relief should be resolved in favor of doing so. *Austin v. Los Angeles Unified Sch. Dist.* (2016) 244 Cal. App. 4th 918, 929.

Analysis

Discretionary relief is warranted under Code of Civil Procedure section 473(b).

As a preliminary matter, Plaintiff has filed no opposition to the motion; as such, the Court deems Plaintiff’s failure to oppose the motion as consent to the granting of the same. *See* Cal. Rules of Court, rule 8.54(c) (“failure to oppose a motion may be deemed a consent to the granting of the motion.”); *see, e.g., Amato v. Downs* (2022) 78 Cal.App.5th 435, 440, n.3 (unopposed motion can be granted on that basis, citing rule 8.54(c)).

Relief is warranted on the merits. First, Defendant timely sought to set aside default. Defendant moved to set aside the default three months after entry of default and default judgment, which is well within six months. Second, Defendant provides a declaration indicating he failed to timely answer the complaint because he had been communicating with Plaintiff’s counsel prior to the entry of default and made a procedural mistake due to a family emergency. Reif Decl., ¶¶ 3-6. Defendant also states that subsequent to the default, he promptly began communicating with Plaintiff’s counsel seeking to set aside the default and/or resolve the matter, and continued to do so through August 2026. Reif Decl., ¶¶ 12-14. Defendant states that despite being advised a stipulation to set aside default was an option, Plaintiff proceeded with attempting to enforce the judgment, at which point he filed the present motion. Reif Decl., ¶¶ 18-22. In addition, there has been no showing that Plaintiff will be prejudiced should the court set aside the default. Under these circumstances, there is sufficient good cause to set aside the default and default judgment based on excusable mistake, inadvertence and neglect.

As required, Defendant has included a proposed answer concurrently with his motion to set aside. *See* Code Civ. Proc. § 473(b) (application for relief “shall be accompanied by a copy of the answer or other pleading proposed to be filed”).

Therefore, the Court will vacate the entry of default and default judgment. The answer shall be filed within five court days.

Plaintiff Jason Christ's August 28, 2026, motion for preliminary injunction, or alternatively, renewed and narrowed motion under Code of Civil Procedure § 1008(b) as against Defendants Elizabeth Aroyan and Richard Milligan (aka "F'kir Eldercake") is denied.

Evidentiary Requests

The Court need not adjudicate Plaintiff's August 28, 2026, request for judicial notice given the disposition described below. The Court would have reached the same outcome with or without consideration of the evidence subject to the request. Plaintiff filed an October 7, 2026, request to present limited oral testimony. That request is untimely. In any event, the request is denied as moot in light of the disposition described below.

Motion for Renewal

Plaintiff previously sought a preliminary injunction against Defendants Aroyan and Milligan, among other things, that would prohibit Defendants from interfering with his operation of certain cooling fans at Dance Church events. See 7/13/26 App., 2:1-15. The Court denied this request by memorandum decision on August 10, 2026. See 8/10/26 Memo. Dec. Plaintiff now makes a *second and renewed* application for a preliminary injunction that, among, other things, would prohibit Defendants from interfering with his provision of up to six fans to these events. 8/28/26 Notice of Motion, 3:12-22. As such, Plaintiff must meet the requirements of Code of Civil Procedure section 1008. See *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 43. (" 'The nature of a motion is determined by the nature of the relief sought, not by the label attached to it.' ")

"Section 1008 describes applications for ... renewals of previous motions." *Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 362, *citing* Code Civ. Proc. § 1008 (b).

Code of Civil Procedure section 1008(b), provides, in pertinent part:

(b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. ...

Code of Civil Procedure section 1008 "serve[s] a purpose. [It is] 'designed to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over.' " *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104. Notes our Supreme Court:

Section 1008's purpose is " 'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.' " Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1067 (2011–2012 Reg. Sess.), as amended Apr. 25, 2011, p. 4. To state that purpose strongly, the Legislature made section 1008

expressly jurisdictional, as subdivision (e) explains: “This section specifies the court’s jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.” [Code Civ. Proc.] § 1008, subd. (e). To deter parties from filing noncompliant renewed applications, the Legislature provided that “[a] violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7.” *Id.* § 1008, subd. (d).

Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839–840 (parentheses omitted).

“Code of Civil Procedure section 1008 imposes special requirements on renewed applications for orders a court has previously refused.” *Zohar Construction & Remodeling, Inc.*, 61 Cal.4th at 833. “A party filing a renewed application must, among other things, submit an affidavit showing what ‘new or different facts, circumstances, or laws are claimed’ to justify the renewed application, *and* show diligence with a satisfactory explanation for not presenting the new or different information [in the earlier motion].” *Ibid.* (citations omitted, italics added); *see Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 362 (same); *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 43 (same).

“If the motion to reconsider [or renew] is based on new facts, the moving party must provide a satisfactory explanation for its failure to produce the evidence at an earlier time.” *Torres v. Design Group Facility Solutions, Inc.* (2020) 45 Cal.App.5th 239, 243. “The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial.” *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212–213; *see Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690 (section 1008’s diligence requirement is not satisfied where the declared knowledge was always within possession of the moving party and “no satisfactory explanation appeared for not bringing it out earlier.”)

At bar, Plaintiff has failed to demonstrate the existence of any new facts, circumstances or law which, with the exercise of diligence, could not have been presented in connection with his first motion. Plaintiff concedes the evidence existing before the August 10, 2026, ruling does not constitute new evidence. 9/22/26 Reply, 1:21–25. Instead, Plaintiff asserts that he sent a new, narrowed and definite, August 11, 2026 written accommodation request (after the Court’s adverse ruling) and Defendant has not accepted or implemented the requested modification. Reply, 1:21–2:15. The Court is not persuaded these are new facts for purposes of renewal. Plaintiff, through the exercise of normal diligence, could have investigated the applicable law and facts prior to his first request for a preliminary injunction, could have crafted a specific and narrow request for accommodation prior to that original request, and could have presented it to Defendant for consideration prior to that original request. “[I]t was [Plaintiff’s] responsibility to advance all correct legal [and factual] theories for [relief] in [his] original motion, so as not to burden the trial court with repeated motions for the same relief.” *California Correctional Peace*

Officers Assn., 181 Cal.App.4th at 47. Plaintiff's decision to change course now, based on the Court's ruling, does not constitute an appropriate ground for renewed consideration. Plaintiff has failed to provide a satisfactory explanation for not presenting the claimed new or different information in his first application for a preliminary injunction. As such, this Court lacks jurisdiction to consider his renewed motion for a preliminary injunction. The second and renewed request for a preliminary injunction is denied.

6. CU0002909 Jason Christ vs. Wendy Phares

Plaintiff Jason Christ's August 28, 2026, motion for preliminary injunction, or alternatively, renewed and narrowed motion under Code of Civil Procedure § 1008(b) as against Defendant Wendy Phares is denied.

Evidentiary Requests

The Court need not adjudicate Plaintiff's August 28, 2026, request for judicial notice given the disposition described below. The Court would have reached the same outcome with or without consideration of the evidence subject to the request. Plaintiff filed an October 7, 2026, request to present limited oral testimony. That request is untimely. In any event, the request is denied as moot in light of the disposition described below.

Motion for Renewal

Plaintiff previously sought a preliminary injunction against Defendant Phares, among other things, that would prohibit Defendant from interfering with his operation of certain personal fan equipment at Ecstatic Dance events. See 7/13/26 App. 1:23-2:14. The Court denied this request by written memorandum decision on August 10, 2026. See 8/10/26 Memo. Dec. and Order. Plaintiff now makes a *second and renewed* application for a preliminary injunction, that, among, other things, would prohibit Defendant from interfering with his provision of up to six fans to these events. 8/28/27 Notice Mot. 2:26-4:12. As such, Plaintiff must meet the requirements of Code of Civil Procedure section 1008. *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 43. (“ ‘The nature of a motion is determined by the nature of the relief sought, not by the label attached to it.’ ”)

“Section 1008 describes applications for ... renewals of previous motions.” *Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 362, *citing* Code Civ. Proc. § 1008 (b).

Code of Civil Procedure section 1008(b), provides, in pertinent part:

(b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. ...

Code of Civil Procedure section 1008 “serve[s] a purpose. [It is] ‘designed to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over.’ ” *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104. Notes our Supreme Court:

Section 1008's purpose is “ ‘to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.’ ” Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1067 (2011–2012 Reg. Sess.), as amended Apr. 25, 2011, p. 4. To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional, as subdivision (e) explains: “This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.” [Code Civ. Proc.] § 1008, subd. (e). To deter parties from filing noncompliant renewed applications, the Legislature provided that “[a] violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7.” [*Id.*] § 1008, subd. (d).

Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839–840 (parentheses omitted).

“Code of Civil Procedure section 1008 imposes special requirements on renewed applications for orders a court has previously refused.” *Zohar Construction & Remodeling, Inc.*, 61 Cal.4th at 833. “A party filing a renewed application must, among other things, submit an affidavit showing what ‘new or different facts, circumstances, or laws are claimed’ to justify the renewed application, *and* show diligence with a satisfactory explanation for not presenting the new or different information [in the earlier motion].” *Ibid.* (citations omitted, italics added); *see Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 362 (same); *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 43 (same).

“If the motion to reconsider [or renew] is based on new facts, the moving party must provide a satisfactory explanation for its failure to produce the evidence at an earlier time.” *Torres v. Design Group Facility Solutions, Inc.* (2020) 45 Cal.App.5th 239, 243. “The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial.” *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212–213; *see Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690 (section 1008’s diligence requirement is not satisfied where the declared knowledge was always within possession of the moving party and “no satisfactory explanation appeared for not bringing it out earlier.”)

At bar, Plaintiff has failed to demonstrate the existence of any new facts, circumstances or law which, with the exercise of diligence, could not have been presented in connection with his first motion. Plaintiff concedes the evidence existing before the August 10, 2026 ruling does not constitute new evidence. 9/23/26 Reply, 1:15–16. Instead, Plaintiff asserts that he sent a new,

narrowed August 16, 2026 written accommodation request (after the Court's adverse ruling), defendant responded with a proposed arrangement, Plaintiff attempted the proposed arrangement on August 18, 2026, and Defendant ultimately declined his accommodation request on August 20, 2026. Reply, 1:15-2:4. The Court is not persuaded these are new facts for purposes of renewal. Plaintiff, through the exercise of normal diligence, could have investigated the applicable law and facts prior to his first request for a preliminary injunction, could have crafted a specific and narrow request for accommodation prior to that original request, and could have presented it to Defendant for consideration prior to that original request. "[I]t was [Plaintiff's] responsibility to advance all correct legal [and factual] theories for [relief] in [his] original motion, so as not to burden the trial court with repeated motions for the same relief." *California Correctional Peace Officers Assn.*, 181 Cal.App.4th at 47. Plaintiff's decision to change course now, based on the Court's ruling, does not constitute an appropriate ground for renewed consideration. Plaintiff has failed to provide a satisfactory explanation for not presenting the claimed new or different information in his first application for a preliminary injunction. As such, this Court lacks jurisdiction to consider his renewed motion for a preliminary injunction. The second and renewed request for a preliminary injunction is denied.

7. CU22-086174 Michael Robert Pasner vs. Song Kowbell

The June 9, 2026, motion by Greg Klein, Esq., to be relieved as Counsel for Defendant is denied as moot. On June 17, 2026, after the filing of the instant motion, Defendant filed a substitution of attorney and consented to represent herself.

8. CU0002002 Cynthia Repella vs. Tania Blair

Defendant Tania Blair's demurrer to the First Amended Complaint is overruled as to the sixth cause of action, and sustained with leave to amend as to the first, second, third, fourth, fifth, seventh and eighth causes of action.

Requests for Judicial Notice

Plaintiff's requests for judicial notice are granted.

Legal Standard on Demurrer

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the

defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.*, 148 Cal.App.4th at 113-114.

“If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted.” *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

Second Cause of Action – Breach of Contract

Defendant first argues the cause of action fails because Plaintiff did not attach the contract to the FAC. The Court disagrees.

“The correct rule is that “a plaintiff may plead the legal effect of the contract rather than its precise language.” [Citation.] *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402. A “plaintiff's failure either to attach or to set out verbatim the terms of the contract was not fatal to his breach of contract cause of action.” *Ibid.* At bar, Plaintiff sufficiently pleads the legal effect of the contract at issue. See FAC, ¶ 33.

Defendant next argues the cause of action fails because Plaintiff did not plead that she satisfied the required precondition to secure the loan extension. The Court agrees.

In a breach of contract claim, a plaintiff must prove she has performed all conditions of the contract, or that she was excused from performance. Similarly, where a defendant's duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event occurred. *Consolidated World Investments, Inc., v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380.

Plaintiff alleges she was denied a contractually guaranteed loan extension, which resulted in the initiation of a foreclosure process against the property. Under the purchase agreement, plaintiff could secure up to an additional two years if certain conditions were met, which includes satisfying a notice requirement as well as paying a \$50,000 principal reduction payment on the mortgage. FAC, ¶ 33. While Plaintiff alleges she complied with the notice requirement, she does not allege she made the additional \$50,000 principal reduction payment. FAC, ¶ 34. Therefore, because Plaintiff does not allege that she performed all conditions or the contract or was excused from the performance, she has not sufficiently alleged a claim for breach of contract.

The demurrer as to the second cause of action is sustained. Plaintiff suggests (without detail) that any deficiency may be cured by amendment, but makes no showing of how cure is reasonably possible. This notwithstanding, the Court will allow the same given the liberality generally associated with amendment of pleadings.

Fifth Cause of Action – Fraud

Defendant argues Plaintiff's fraud claim fails because it is barred by the statute of limitations and it fails to meet the heightened pleading standard for fraud claims. The Court agrees in part.

“The elements of fraud that will give rise to a tort action for deceit are: “(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’ ” *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974. Code of Civil Procedure section 338 subdivision (d) states, “[a]n action for relief on the ground of fraud or mistake [must be brought within three years]. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.”

At bar, the FAC alleges that: Defendant represented the Property was suitable for use as a retreat center; Defendant concealed/failed to disclose material facts including the lack of permits or legal habitability of structures and risk of County enforcement action affecting use and value; Defendant intended for Plaintiff to rely on them to induce Plaintiff to purchase the property; Plaintiff did so; and Plaintiff could not reasonably have discovered the full extent of the misrepresentations and concealment until February 2024 when she received a county code compliance letter/notice identifying unpermitted habitations and violations. FAC, ¶¶ 56-60. Plaintiff adequately pleads most elements of fraud as well as discovery within the statute of limitations period, with the exception of scienter. The demurrer as to the fifth cause of action is sustained. Plaintiff suggests (without detail) that any deficiency may be cured by amendment without any showing of how cure is reasonably possible. This notwithstanding, the Court will allow amendment.

Sixth Cause of Action – Negligent Misrepresentation

Defendant argues Plaintiff’s negligent misrepresentation claim is barred by the statute of limitations. As discussed above, Plaintiff adequately pleads delayed discovery. The demurrer as to the sixth cause of action is overruled.

Seventh Cause of Action – Conversion

Defendant argues Plaintiff fails to allege a wrongful exercise of control over the joint insurance check. The Court agrees.

“Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” *Lee v. Hanley* (2015) 61Cal.4th 1225, 1240.

At bar, the FAC does not include sufficient allegations as to the Defendant’s conversion by a wrongful act or disposition of property rights. The demurrer as to the seventh cause of action is sustained. Plaintiff summarily requests leave to amend. Given liberality regarding leave to amend, that request will be granted.

Eighth Cause of Action – Tortious Interference with Prospective Economic Advantage

Defendant argues this cause of action fails because there are insufficient allegations of a specific economic relationship and intentional wrongful acts designed to disrupt the same. The demurrer will be sustained on this ground.

“Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant’s action.” *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.

Plaintiff has filed no opposition to this portion of the demurrer; as such, the Court deems Plaintiff’s failure to oppose the demurrer as to the eight claim as consent to the granting of the same. See Cal. Rules of Court, rule 8.54(c) (“failure to oppose a motion may be deemed a consent to the granting of the motion.”); see, e.g., *Amato v. Downs* (2022) 78 Cal.App.5th 435, 440, n.3 (unopposed motion can be granted on that basis, citing rule 8.54(c)).

Again, given the liberality associated with amendment of pleadings, the Court will allow an opportunity to amend.

First, Third, and Fourth Causes of Action

Defendant argues the first, third, and fourth causes of action are all based on the alleged breach of contract and thus necessarily fail. The Court agrees, and the demurrer to these causes of action are sustained.

Plaintiff requests leave to amend without providing any detail. The Court will allow an additional opportunity to cure the defects.

9. CU0002670 Jose A. Valdovinos vs. DD Investments, LLC, et al.

Cross-Defendant Valdovinos’ June 3, 2026, demurrer to the Cross-Complaint of Cross-Complainants Donnell and DD Investments is denied as moot.

On October 6, 2026, Cross-Complainant Donnell filed a First Amended Cross-Complaint (FACC) against Cross-Defendant. Of note, DD Investments is not a named cross-complainant therein.

“[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.” *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 (quotations and citations omitted). “The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. [¶] Because there is but one complaint in a civil action, the filing of an amended complaint moots a motion directed to a prior complaint.” *Ibid.* (quotations, and citations omitted). “Thus, the filing of [the FACC] renders moot [the] demurrer to the original [Cross-Complaint].” *Ibid.* (quotations and citations omitted).