June 22, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003212 Jefferson Capital Systems, LLC vs. John Ahearn

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to file a request for default/default judgment despite the fact Defendant was served over eight (8) months ago. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420.

2. CL0003551 Jefferson Capital Systems LLC vs. David Carter

No appearances required. In light of the proof of service of the Summons and Complaint filed on April 29, 2026, the OSC re Dismissal is vacated.

3. CL0003684 Geico General Insurance Company vs. Kevin L. Vilaysane

No appearances required. In light of the proof of service of the Summons and Complaint filed on April 29, 2026, the OSC re Dismissal is vacated.

4. CL0003686 WELLS FARGO BANK, N.A. vs. LORENZO A ARIAS, an individual

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for over five (5) months. The Court notes, while there are two Affidavits of Unsuccessful Service on file, they both reflect only a single service attempt on February 4, 2026 with no additional information regarding efforts to locate and serve Defendant Arias in over four months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for September 18, 2026 at 11:00 a.m.

5. CL0003688 PCA ACQUISITIONS V, LLC vs. DREENA DANIELS

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for over five (5) months. The Court notes, while there is a Declaration of Non-Service on file, such indicates only a single service attempt on February 1, 2026 with no additional information regarding efforts to locate and serve Defendant in over four months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for September 18, 2026 at 11:00 a.m.

6. CL0003693 Midland Credit Management Inc. vs. Elena Farrant

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for over five (5) months. Absent good cause being shown, the

Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for September 18, 2026 at 11:00 a.m.

7.CL0003816 Midland Credit Management Inc. vs. Philip Cohen

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for over four (4) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for October 16, 2026 at 11:00 a.m.

8. CU0002569 Greg Bomhoff et al vs. Lake of the Pines Association, a California non-profit mutual benefit Corporation et al

Motion to Consolidate

Plaintiffs' unopposed motion to consolidate for all purposes is GRANTED.

Code of Civil Procedure § 1048 grants discretion to the trial court to consolidate actions involving common questions of law or fact. A consolidation of actions does not affect the rights of the parties. The purpose of consolidation is to avoid unnecessary costs or delay, avoid duplication of procedure, particularly in the proof of issues common to both actions, and avoid inconsistent results by hearing and deciding common issues together. See *Estate of Baker* (1982) 131 Cal.App.3d 471, 485. Each case presents its own facts and circumstances, but the court generally considers the following: (1) timeliness of the motion: i.e., whether granting consolidation would delay the trial of any of the cases involved; (2) complexity: i.e., whether joining the actions involved would make the trial too confusing or complex for a jury; and (3) prejudice: i.e, whether consolidation would adversely affect the rights of any party. See *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 430–431.

Here, because both CU0001216 and CU0002569 involve identical parties and involve common questions of fact and law, and because no party opposes the motion, the Court finds consolidation is in the interest of justice and GRANTS the motion

Anti-SLAPP Motion to Strike

Defendants' Special Motion to Strike Defendants' First Amended Complaint is granted. Plaintiffs' Third Cause of Action for Defamation and Eleventh Cause of Action for Intentional Infliction of Emotional Distress are stricken without leave to amend. Defendants' request for attorney's fees is granted in the sum of $12,375.00 plus $60.00 in costs.

<u>Request for Judicial Notice</u>

Plaintiffs' requests for judicial notice are granted.

<u>Objections to Evidence</u>

Defendants' objections to Plaintiffs' Declaration of Ron Bomhoff in Opposition are: sustained.

Defendants' objections to Plaintiffs' Declaration of Craig Diamond in Opposition: are sustained as the Court does not find the assertions contained in Mr. Diamond's declaration to be material to the Court's decision on attorney's fees.

Plaintiffs' objection to Defendants' supplemental declaration of Sean Bothelio is sustained. It is unfair for the moving party to provide these materials after plaintiff's opposition has been filed. *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764

Timeliness

Plaintiffs argue Defendants' motion is untimely because it was filed over 60 days after all Defendants were served with the Complaint. The Court disagrees.

First, the motion was made within 60 days of service of Defendant Lake of the Pines Association ("LOPA"). LOPA was served by substituted service on January 16, 2026 with mailing on January 20, 2026. Pltf. RJN Ex. 2. Therefore, service was effective 10 days after mailing, on January 30, 2026. Code Civ. Proc. § 415.20(a). The underlying motion was filed on March 24, 2026. Such filing is within the 60-day deadline.

Moreover, an amended complaint may "render moot an anti-SLAPP motion directed to a prior complaint," because "an 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. Therefore, the filing of the First Amended Complaint ("FAC") on March 6, 2026 could have rendered any previously filed motion moot and allowed for a newly filed motion within 60 days of the filing of the Amended Complaint. Here, regardless of which date is argued, the result is the same – the motion is timely.

Finally, the Court notes a different analysis may be appropriate in the court's discretion to deny a late filing after 60 days have passed from service of the original complaint but timely as to an amended complaint, when "much litigation, including discovery, had already been conducted for…years before the anti-SLAPP motion brought it to a halt. It is far too late for the anti-SLAPP statute to fulfill its purpose of resolving the case promptly and inexpensively." *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism (Newport II)* (2018) 4 Cal.5th 637, 645. "To minimize this problem, section 425.16, subdivision (f), should be interpreted to permit an anti-SLAPP motion against an amended complaint if it could not have been brought earlier, but to prohibit belated motions that could have been brought earlier (subject to the trial court's discretion to permit a late motion)." *Ibid.*

Under any analysis, the Court finds the current motion timely. The litigation is new, with the Court ruling on a demurrer and motion to strike at the same hearing date.

Standard of Review

In ruling on a defendant's special motion to strike, the trial court uses a "summary-judgment-like procedure at an early stage of the litigation." *Varian Medical Systems, Inc. v. Delfino* (2005) 35

Cal.4th 180, 192. This is a two-step process. First, the defendant must show the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue. Code Civ. Proc., § 425.16(b)(1). Second, if the defendant carries that burden, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the claim. Code Civ. Proc., §425.16(b)(3). The defendant has the burden on the first issue, and the plaintiff on the second. *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928; *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919. In making both determinations the trial court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." Code Civ. Proc., §425.16(b)(2); *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.

The Defendant's act underlying the cause of action must itself have been in furtherance of the right of petition or free speech. *City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 76-78. The defendant's acts are protected activity – that is, made in furtherance of protected petition or free speech in connection with a public issue – if they fit into one of the following categories under the section 425.16, subdivision (e) categories: (1) oral or written statements made before a legislative, executive, judicial or any other official proceeding; (2) oral or written statements made in connection with an issue under consideration or review by a legislative, executive, judicial body, or any other official proceeding authorized by law; (3) oral or written statements made in a place open to the public or in a public forum in connection with an issue of public interest; and (4) any other conduct in furtherance of the exercise of the constitutional rights of petition or free speech in connection with a public issue or an issue of public interest. Code Civ. Proc., § 425.16(e).

If such a showing is made, the burden shifts to the plaintiff to show a probability of prevailing on the claim. Code Civ. Proc., § 425.16(b)(1). To establish a probability of prevailing on the merits, the plaintiff must demonstrate the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548. In making this assessment it is the court's responsibility to accept as true the evidence favorable to the plaintiff. *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal. App. 4th 204, 212. The complaint needs only to establish their claim has minimal merit (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89) to avoid being stricken as a SLAPP. *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 738.

"For purposes of this inquiry, 'the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.' (Citation omitted.)" *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.

In addition:

> Analysis of an anti-SLAPP motion is not confined to evaluating whether an entire cause of action, as pleaded by the plaintiff, arises from protected activity or has merit. Instead, courts should analyze each claim for relief — each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action — to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion.

Bonni v. St. Joseph Health System (2021) 11 Cal.5th 995, 1010.

Step One: Arising From Protected Activity

> "A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] Critically, 'the Defendant's act underlying the Plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech.' [Citations.] '[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.' [Citations.] Instead, the focus is on determining what 'the Defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.' [Citation.] 'The only means specified in section 425.16 by which a moving Defendant can satisfy the ["arising from"] requirement is to demonstrate that *the Defendant's conduct by which Plaintiff claims to have been injured* falls within one of the four categories described in subdivision (e)....' [Citation.] In short, in ruling on an anti-SLAPP motion, Courts should consider the elements of the challenged claim and what actions by the Defendant supply those elements and consequently form the basis for liability."

Park v. Board of Trustees of California State University (2017) 2 Cal.5th 1057, 1062–1063.

Litigation Privilege

In addition, under Civil Code section 47(b), a publication or broadcast made, "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law…" is privileged. Civ. Code § 47(b).

The litigation privilege, codified in Civil Code section 47, applies to any publication required or permitted by law in the course of a proceeding authorized by law to achieve the objects of the proceeding, even though the publication is made outside the Courtroom and no function of the Court, or its officers is involved. *Albertson v. Raboff* (1956) 46 Cal.2d 375, 381. The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. *Silberg v. Anderson* (1990) 50 Cal.3d 205, 213-214.

There are exceptions to Section 47(b); specifically, there is no privilege when a "person makes a false report that another person has committed … a criminal act … knowing that the report is false, or with reckless disregard for the truth or falsity of the report." Civ. Code § 47(b).

The principal purpose of the litigation privilege is to afford litigants and witnesses the utmost freedom of access to the Courts without fear of being harassed subsequently by derivative tort actions. *Silberg, supra*, 50 Cal.3d at 213. To achieve this purpose, courts have given the litigation privilege a broad interpretation. *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241. Other purposes underlying the litigation privilege include assurance of "the utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing." *Silberg, supra* at 213-214. The privilege is a matter of substantive law and, when applicable, is absolute, because it applies regardless of the communicator's motives, morals, ethics, or intent. *Id.* at 216, 220.

The litigation privilege has been held applicable to all torts except malicious prosecution. *Silberg, supra*, 50 Cal.3d at 215-216, *citing Albertson, supra,* 46 Cal.2d at 382.

Analysis

At bar, Defendants argue, among other things, Plaintiff Ron Bomhoff made statements about the pending lawsuit during 2025 board elections; the Board of Directors sent an email letter and video footage concerning litigation impacting the Association including Plaintiffs' pending lawsuit; videos were shown at an August 2025 Town Hall Meeting and a powerpoint presentation was shown at the same meeting regarding pending litigation; videos were subsequently shown at Association Clubhouse resulting in a 911 call and Defendant Bothelio made certain statements to police after their arrival; statements were made at a Board Meeting in October, 2025 regarding the pending litigation; and a newsletter update was disseminated about implementation of additional safety rules.

The term "public interest" has been broadly defined to include "private conduct that…affects a community in a manner similar to that of a government entity." *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 115. Where the issue is limited to a definable portion of the public, such as a private group or community rather than the public at large, the protected activity must "occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance." *Id*. at 119. Courts have extended protection to conduct occurring in the context of disputes within homeowners' associations. *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1468. Additionally, statements made in public forums, including board meetings and community newsletters, and in connection with an issue of public interest fall within the protections of Code of Civil Procedure §425.16(e)(3). *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479. Providing such protection to statements made in these forums furthers the statute's policy of encouraging public participation in matters of public interest. *Ruiz, supra,* 134 Cal.App.4th at 1470.

Here, all of the alleged statements and conduct are connected to an ongoing controversy and debate – Plaintiffs' underlying lawsuit. The statements and conduct were made in connection with an issue of interest to the members of the Lake of the Pines community, as they concerned decisions about future association management, as well as the use of homeowners' association fees. The statements were thus calculated to persuade members of the homeowner's association regarding decisions on the method of government and use of funds. Therefore, the protection of

such statements serves the anti-SLAPP statute's purpose of encouraging participation in an ongoing controversy, debate, or discussion. *Cabrera v. Alam*, 197 Cal.App.4th 1077, 1090-1091.

Step Two: Probability of Prevailing on the Merits

> If the Court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the Plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The Court, without resolving evidentiary conflicts, must determine whether the Plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the Plaintiff has shown a probability of prevailing.

Baral v. Schnitt (2016) 1 Cal.5th 376, 396.

"To demonstrate a probability of prevailing on the merits, the Plaintiff must show that the complaint is legally sufficient and must present a prima facie showing of facts that, if believed by the trier of fact, would support a judgment in the Plaintiff's favor. [Citations.] The Plaintiff's showing of facts must consist of evidence that would be admissible at trial. . . . [Citations.]" *JSJ Limited Partnership, supra*, 205 Cal.App.4th at 1521.

At this second stage, "a plaintiff seeking to demonstrate the merit of the claim 'may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.' " *Sweetwater Union High School Dist. v. Gilbane Building Co*. (2019) 6 Cal.5th 931, 940 (citations omitted). "If the pleadings are not adequate to support a cause of action, the plaintiff has failed to carry his burden in resisting the motion." *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 31.

The litigation privilege is relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense which a complainant must overcome to demonstrate a probability of prevailing. *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1522. "Where a defendant asserts a privilege or other defense, the plaintiff must show that it can overcome that defense." *Doe v. California Assn. of Directors of Activities* (2025) 117 Cal.App.5th 796, 811. A complainant cannot establish a probability of prevailing if the litigation privilege precludes liability on the claim. *Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.

The common interest privilege also "grants a privilege for any "communication, without malice, to a person interested therein…by one who is also interested." (Civ. Code, § 47, (subd. (c).) While most commonly asserted in defamation actions, this privilege "applies to virtually all other causes of action, except malicious prosecution, based upon publication of assertedly offensive material."" *Doe, supra*, 117 Cal.App.5th at 814 (citation omitted). "To trigger the common interest privilege, the shared interest must be more than a "mere general or idle curiosity."" *Ibid.* (citation omitted). "To overcome the common interest privilege, a plaintiff must show malice." *Id*. at 815.

> Malice is shown by presenting evidence that the defendant was " ' "motivated by hatred or ill will towards the plaintiff" ' " or that the defendant " ' "acted in reckless disregard of the plaintiff's rights" ' " because he " ' "lacked reasonable grounds for [his] belief in the truth of the publication." ' " [Citation]. Because malice focuses on a defendant's state of mind [citation], it may not be inferred from the mere fact that a communication was made.

Ibid. (citations omitted).

"A defendant invoking the common interest privilege bears the initial burden of showing that the privilege applies to the communication in question, and, if that showing is made, the burden shifts to the plaintiff to rebut the privilege by showing malice." *Ibid*.

Analysis

The elements of a claim for defamation depend on whether plaintiff is a public figure or a private figure and whether it concerns a public or private matter. For a private figure, the elements for a defamation cause of action in general are "(1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." *See John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1312. If the defamation involves an issue of public concern, proof of actual malice is necessary to recover presumed or punitive damages even if the plaintiff is not a public figure. *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 747; CACI 1702. If the defamation relates to a private figure, in connection with a private matter, a plaintiff must prove negligence to recover any damages. *Brown, 4*8 Cal.3d at 747; *Carney,* 221 Cal.App.3d at 1016, CACI 1704.

> A cause of action for intentional infliction of emotional distress exists when there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'

Hughes v. Pair (2009) 46 Cal.4th 1035, 1050-1051 (citations omitted).

Defendants have shown that both the litigation privilege and the common interest privilege apply to the communications at issue. LOPA and its members share a direct and immediate concern in ongoing litigation and safety issues. The communications challenged by Plaintiffs in both their defamation and IIED claims relate to the underlying litigation and these common interests. Sharing statements about the pending lawsuit during 2025 board elections; sending emails and video footage concerning litigation impacting the Association, including Plaintiffs' pending lawsuit; showing videos and a powerpoint presentation at a Town Hall Meeting regarding pending litigation; playing a looped video at the Association Clubhouse; making statements at a board meeting in October, 2025 regarding the pending litigation; and sharing a newsletter update about implementation of additional safety rules all trigger application of the common interest

privilege and the litigation privilege. Therefore, Plaintiffs have the burden to show malice in order to rebut these privileges.

Plaintiffs argue they can show Defendants acted with malice because of the history between the parties, citing to the FAC and a declaration made by Plaintiff Ron Bomhoff. Upon examination of the statements submitted by Plaintiffs, it is clear the parties continue to have a contentious relationship. Indeed, the present motion is a result of the underlying litigation, and the claims made in the FAC are a continuation of that litigation. Yet, a contradictory relationship, even one resulting in litigation, does not equate to malice. While Plaintiffs have presented evidence of an underlying combative relationship between the parties, they have not presented any actual evidence the statements at issue herein were made with malice as defined above.

Accordingly, the Court concludes Plaintiffs have not presented prima facie evidence of malice and, therefore, have failed to show they can overcome the litigation privilege and the common interest privilege. As a consequence, they have failed to show a probability of prevailing on their defamation cause of action and their intentional infliction of emotional distress cause of action. Thus, those claims must be stricken under the anti-SLAPP statute.

Attorney Fees

Pursuant to CCP § 425.16(c), a prevailing defendant is entitled to recover attorneys' fees and costs associated with the motion. Under CRC 3.1702, a request for attorneys' fees must be made within 180 days of service of the notice of entry of judgment or "within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case[.]" A defendant may only recover fees and costs related to the motion to strike. *Lafayette Morehouse, Inc. v. Chronicle Publishing Co*. (1995) 39 Cal.App.4th 1379, 1383. This includes fees associated with bringing the motion for fees. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 ("an award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure section 425.16."). Additionally, "[a]ny fee award must also include those incurred on appeal. [Citation.]" *Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 122.

Notice of Attorney's Fees

At bar, Plaintiffs argue Defendants' request for attorney's fees is defective because the notice of the motion does not identify the parties or persons against whom sanctions are sought as required by due process. The Court disagrees.

Pursuant to Code of Civil Procedure § 425.16(c)(1), "a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs." The notice of the motion stated Defendant would be seeking attorney's fees of $27,806.50 pursuant to the same section. Such is sufficient notice for Defendants' recovery of statutory fees.

Reasonableness of Hourly Rate

"A trial court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney ...

involved in the presentation of the case." *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321 (*Christian Research*). "The reasonableness of attorney fees is within the discretion of the trial court, to be determined from a consideration of such factors as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel and the amount of time involved. The court may also consider whether the amount requested is based upon unnecessary or duplicative work." *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.

Defense counsel was admitted to the California Bar in 1999 and has extensive experiences experience in civil litigation. Loweth Decl., ¶¶ 16-17.) Defense counsel's hourly billing rate is $495.00/hour. Loweth Decl. ¶ 10.

The Court finds an hourly rate of $495.00/hour is reasonable considering defense counsel's experience and the attorney's rates in the community for counsel of similar experience.

Reasonable Time Spent Litigating the Anti-SLAPP

The burden is on the party seeking attorney's fees to prove that the fees it seeks are reasonable. See *Vines v. O'Reilly Auto Enterprises, LLC* (2022) 74 Cal.App.5th 174, 184. But " '[i]n challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice.' " *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488 citing *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th¿550, 564. "The anti-SLAPP statute provides for an award of attorney fees and costs to the prevailing defendant on a special motion to strike. (§ 425.16, subd. (c).) The defendant may recover fees and costs only for the motion to strike, not the entire litigation." *Christian Research, supra*, 165 Cal.App.4th at p. 1320.

Defense counsel represents that they spent 42.5 hours in connection with preparing the motion. Loweth Decl. ¶ 18. Defense counsel further asserts that they anticipate spending 11.0 hours of anticipated time for drafting a reply and arguing the motion, thus incurring an additional $5,445 in fees. Loweth Decl., ¶ 19. Lastly, Defense counsel also request costs in the sum of $1,324.00 for filing the Motion, as well as for initial appearance filing fees and electronic service fees. Loweth Decl., ¶ 18.

The Court finds that the 53.5 hours spent on this matter are excessive considering the expertise of Defendants' counsel including the fact he asserts defense counsel's firm exclusively handles HOA litigation, and the instant motion includes issues common to such litigation. Moreover, the instant motion relates to the FAC, yet the hours asserted also pertained to review of the initial Complaint. The Motion is nine (9) pages long, the Memorandum of Points and Authorities in the matter is fifteen (15) pages long exclusive of caption and table of contents, and the supporting declarations total thirteen (13) pages exclusive of exhibits. Further, the reply is ten (10) pages in length. Even assuming oral argument, such does not warrant a total of 53.5 hours of work by lead counsel. Finally, it would be inappropriate to award initial filing fees, as the motion will not end the litigation, and Defendants were required to pay an intial filing fee in relation to appearance in the matter regardless of the outcome of the instant motion.

The Court finds that in research, drafting, and preparing for the hearing on this Motion, defense counsel should have spent no more than 35 hours billed at a rate of $495.00/hour or $17,325.00 in fees.

Therefore, the Court grants Defendants' request for attorney's fees in the sum of $17,325.00 plus $60.00 in costs which is the filing fee related solely to the motion for a total amount of reasonable costs and fees of $17,385.00. Said amount shall be paid to counsel for Defendants no later than ten (10) days from entry of this order.

Demurrer

Defendants' Demurrer to Plaintiffs' First Amended Complaint is sustained with leave to amend as to the fifth, sixth, and eighth causes of action, and sustained without leave to amend as to the twelfth, thirteenth, and fourteenth causes of action. Plaintiffs must file any second amended complaint within ten (10) days of notice of the Court's order.

Request for Judicial Notice

Defendants' first request for judicial notice is granted.

Defendants' second request for judicial notice is denied. It is unfair for the moving party to provide these materials after plaintiff's opposition has been filed. *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 (" 'Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief of an appellant,' " citing *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11).

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.

Legal Standard on Abatement

Code of Civil Procedure section 430.10(c) provides that a party against whom a complaint is filed may object by demurrer to the pleading on the ground, "[t]here is another action pending between the same parties on the same cause of action." This plea in abatement may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action. *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 789. The later-filed suit is "abated" (stayed) pending resolution of the earlier action which, if concluded on the merits will be res judicata; if not, the later action can proceed. *Id*. at 788-89.) The court can take judicial notice of the court files in determining the basis for this ground. See *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 191-192.

However, "[a] A plea in abatement is good only as long as the triggering condition lasts." *County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 569. At bar, the Court has granted the motion to consolidate the cases for all purposes, so there is no need to stay the causes of action.

Analysis

Fifth Cause of Action – Retaliation for Exercising Protected Free Speech

Defendants argue Plaintiffs' allegations fail to specify which enforcement concept under Civil Code § 4515 applies, and the factual allegations fail to support either theory. The Court agrees with the latter argument.

"It is the intent of the Legislature to ensure that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes." Civ. Code § 4515(a). Civil Code § 4515(b) provides, in relevant part, that "[t]he governing documents, including bylaws and operating rules, shall not prohibit a member or resident of a common interest development from doing any of the following: ¶ (5) Distributing or circulating, without prior permission, information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes, or other issues of concern to members and residents at reasonable hours and in a reasonable manner." Civ. Code, § 4515(b)(5). Civil Code § 4515(d) states, "A member or resident of a common interest development who is prevented by the association or its agents from engaging in any of the activities described in this section may bring a civil … action to enjoin the enforcement of a governing document, including a bylaw and operating rule, that violates this section. The court may assess a civil penalty of not more than five hundred dollars ($500) for each violation." Civ. Code § 4515(d). "Pursuant to Civil Code § 4515(e), "An association shall not retaliate against a member or a resident for exercising any of the rights contained in this section." Civ. Code § 4515(e).

At bar, the FAC alleges Defendants violated Civil Code § 4515 "by seizing and destroying flyers and denying plaintiffs the ability to exercise their rights under law to peacefully assemble and freely communicate with … with respect to common interest development living…." FAC, ¶ 70.

The FAC also alleges Defendants violated Civil Code § 4515(b)(5) by denying Plaintiffs the opportunity to distribute or circulate information about common interest development living, and violated Civil Code § 4515(e) by retaliating against Plaintiffs for exercising their rights under the Civil Code. FAC, ¶¶ 71-72. However, there is no allegation the HOA's governing documents prohibited Plaintiffs from distributing or circulating information. Because the plain language of the statute states, "the governing documents, including bylaws and operating rules, shall not prohibit a member or resident of a common interest development…" from doing a list of activities, including distributing or circulating information, it follows that the phrases "engaging in any of the activities described in this section" and "exercising any of the rights contained in this section" contained in Civil Code § 4515(d)-(e) are dependent on the prohibition being contained in the governing documents.

Therefore, the demurrer as to this cause of action is sustained. While Plaintiffs do not assert any deficiency can be cured by amendment, the Court will allow amendment given the liberality generally associated with amendment of pleadings.

Sixth Cause of Action – Violation of Due Process Protections During Disciplinary Proceedings

Defendants argue the FAC fails to identify any disciplinary hearings or fines imposed sufficient to state a cause of action. The Court again agrees.

The FAC alleges Defendants failed to notify Plaintiff Ron Bomhoff in writing prior to the meeting to consider or impose discipline, or impose a monetary charge as a means of reimbursing the association for costs incurred to repair damage to a common area caused by a member, in violation of Civil Code § 5855. FAC, ¶ 78. The FAC continues by stating Defendants "regularly imposes fines against members who are critical of the Association governance" and are "more interested in meting out punishment than assuring justice." FAC, ¶¶ 79-81. However, the FAC fails to identify any specific instances in 2025 of meetings held to consider or impose discipline on Plaintiff Ron Bomhoff, or any discipline or monetary charges subsequently imposed.

Therefore, the demurrer as to the sixth cause of action is sustained. While Plaintiffs do not assert the deficiency can be cured by amendment, the Court will allow amendment given the liberality generally associated with amendment of pleadings.

Eight Cause of Action – Violation of Civil Rights

Defendants argue Plaintiffs' allegations fail to allege any additional coercive element as required by Civil Code § 52.1. Plaintiffs argue the demurrer should be overruled because they were denied free speech as protected by Civil Code § 4515, were fined without due process as required by Civil Code § 5855, and state Defendants communicated threats of litigation to chill speech and committed a crime by filing a false police report. The Court agrees with Defendants.

> The Bane Act permits an individual to pursue a civil action for damages where another person 'interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or

> individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.' 'The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threat, intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.'

King v. State of California (2015) 242 Cal.App.4th 265, 294.

"The Legislature enacted section 52.1 to stem a tide of hate crimes." *Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 338. Speech alone is not sufficient to constitute a violation unless it involves a credible threat of violence. Civ. Code § 52.1(k). Thus, to state a cause of action under the Bane Act there must first be violence or intimidation by threat of violence. *Cabesuela v. Browning-Ferris Industries* (1998) 68 Cal.App.4th 101, 111. "The plaintiff must show 'the defendant interfered with or attempted to interfere with the plaintiff's legal right by threatening or committing violent acts.' " *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395. Such conduct must be intentional. *Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125.

As discussed above, Plaintiffs fail to sufficiently allege violations of Civil Code §§ 4515 and 5855. Thus, those allegations are insufficient to support a violation of Civil Code § 52.1.

The FAC alleges "Defendants…communicated threats of litigation to chill speech and assembly of Plaintiffs" and "Sean Bothelio called the Sheriff and had them deployed based on false and misleading information". FAC, ¶ 95, 97. However, such does not state any allegation of "violence or intimidation by threat of violence" as required to overrule a demurrer as to this cause of action. *Cabesuela, supra*, 68 Cal.App.4th at 111. Additionally, the Court will not accept as true contentions, deductions or conclusions of fact or law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Because Plaintiffs present nothing more than such, the demurrer as to this cause of action is sustained. The Court will allow amendment given the liberality generally associated with amendment of pleadings.

Twelfth Cause of Action – Violation of Equal Protections for Selective Enforcement of Davis-Stirling Provisions

In opposition, Plaintiffs concede Civil Code § 5850 is inapplicable. Therefore, the demurrer as to this cause of action is sustained without leave to amend.

Thirteenth Cause of Action – Failure to Provide an Unbiased, Meaningful Internal Dispute Resolution

Defendants argue Civil Code §§ 5900 *et seq*. only requires a homeowners' association to provide a dispute resolution process, and does not create a private right of action. The Court agrees.

Civil Code §§ 5900 *et seq*., requires an Association to provide a fair, reasonable and expeditious procedure for resolving any disputes which conforms to the requirements in Civil Code § 5910. If an association does not provide a "fair, reasonable and expeditious procedure", the procedure provided for in Civil Code § 5915 applies. Civ. Code § 5905(c). "If the procedure is invoked by

a member, the association shall participate in the procedure." Civ. Code § 5910(c). If the procedure is invoked by the association, the member is not required to participate, or may appeal to the board if the dispute is not resolved in his favor. Civ. Code § 5910(d). The member may be assisted by an attorney at his own cost. Civ. Code § 5910(f). "An association may not file a civil action regarding a dispute in which the member has requested dispute resolution unless the association has complied with Section 5910 by engaging in good faith in the internal dispute resolution procedures after a member invokes those procedures." Civ. Code § 5910.1.

Therefore, based on the statutory language, an internal dispute resolution procedure must be provided, but a member is not required to participate in such prior to litigation. There is no private right of action described for a member who is not satisfied with the internal dispute resolution procedure.

Thus, the demurrer as to this cause of action is sustained, and, because there is no potential cure by amendment, no leave to amend is granted.

Fourteenth Cause of Action – Breach of the Covenant of Quiet Enjoyment

Plaintiffs argue they have been deprived of their easement of enjoyment in common areas, to which Defendants argue is subject to certain rights of regulation as described in the community rules and regulations and are otherwise inapplicable to Plaintiffs' allegations. Defendants have the better argument.

The FAC alleges Defendants have instituted a smear campaign against Plaintiffs, Plaintiffs have been unable to enjoy the grounds and other common areas due to ongoing audio and video surveillance, and Plaintiffs have had peaceful enjoyment of their homes interrupted due to public shaming. FAC, ¶¶ 137-139.

At bar, Article II of the HOA's CC&Rs grants a non-exclusive right and easement of enjoyment to common areas, subject to rules and regulations set by the HOA. FAC, Ex. 1, Art. II, Sec. 1. The other provisions cited by Plaintiffs are inapplicable to any covenant of quiet enjoyment. Additionally, the facts stated in the FAC are conclusory and would only apply to alleged governance disputes over common areas, rather than any potential breach of a covenant of quiet enjoyment.

Therefore, the demurrer as to the fourteenth cause of action is sustained. Because there is no potential cure by amendment, no leave to amend is granted.

Motion to Strike

Defendants' motion to strike is denied in part and granted in part. The motion is only granted with respect to striking the claims for attorney's fees in the first, third, fourth, fifth, sixth, ninth, and eleventh causes of action.

Request for Judicial Notice

Plaintiffs' request for judicial notice is granted.

Legal Standard

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part thereof. Code Civ. Proc., § 435(b)(1). The notice of motion to strike a portion of a pleading shall quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count or defense. California Rules of Court, rule 3.1322.

The grounds for a motion to strike shall appear on the face of the challenged pleading or form any matter of which the court is required to take judicial notice. Code Civ. Proc., § 437(a). The court then may strike out any irrelevant, false, or improper matter inserted in any pleading and strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Code Civ. Proc., § 436. When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend. *Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

Analysis

Punitive Damages

Defendant seeks to strike Plaintiffs' prayer for punitive damages on the grounds insufficient facts are alleged to support the existence of malice, oppression, or fraud. The Court disagrees.

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. [Citations.] In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. [Citations.] In ruling on a motion to strike, courts do not read allegations in isolation." *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." Civ. Code, § 3294(a). "'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Civ. Code, § 3294(c)(1). "'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." Civ. Code, § 3294(c)(2). Fraud is "intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Civ. Code, § 3294(c)(3).

The conduct alleged in the FAC is sufficiently despicable, cruel, or unjust for pleading purposes. Additionally, Plaintiffs allege Defendants acted out of a desire to damage their reputation in the community by spreading a misleading version of events, and have described a volatile relationship between the parties. FAC, ¶ 28-32. Therefore, it may be reasonably inferred

Defendants acted out of malice. Accordingly, the motion to strike is DENIED as to punitive damages.

Immaterial Allegations

"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) Strike out any irrelevant, false, or improper matter inserted in any pleading." Code Civ. Proc., § 436.

> An immaterial allegation in a pleading is any of the following:
> (1) An allegation that is not essential to the statement of a claim or defense.
> (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense.
> (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.

Code Civ. Proc. § 431.10(b).

"An 'immaterial allegation' means 'irrelevant matter' as that term is used in Section 436." Code Civ. Proc., § 431.10(c).

The allegations at issue may be relevant to Plaintiffs' claim for punitive damages. As one court explained: "We emphasize that such use of the motion to strike should be cautious and sparing. We have no intention of creating a procedural 'line item veto' for the civil defendant." *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683. Accordingly, the motion to strike based on assertions material is "otherwise irrelevant, false or improper" is DENIED.

Attorney's Fees

Plaintiffs agree attorneys' fees are not allowed under the first, third, ninth, and eleventh causes of action. In a concurrent demurrer, the Court has sustained without leave to amend the twelfth, thirteenth, and fourteenth causes of action. Thus, the only remaining causes of action to evaluate are the fourth, fifth, and sixth.

The fourth cause of action for breach of fiduciary duty pursuant to Corporations Code § 7238 does not allow for attorney's fees. While Plaintiffs, in opposition, claim the cause of action was brought under Civil Code § 5975, such was not pled in the Complaint.

The fifth cause of action for violation of Civil Code § 4515 does not allow for a claim of attorney's fees. Civ. Code § 4515(d) (stating the court may only assess a civil penalty of not more than $500.00 per violation).

The sixth cause of action for violation of Civil Code § 5855 does not include a provision for recovery of attorney's fees.

Therefore, the motion to strike the prayer for attorney's fees from the first, third, fourth, fifth, sixth, ninth, eleventh causes of action is GRANTED.

Again, any second amended complaint shall be filed no later than ten (10) days from notice of entry of this order.

9. CU0002183 Adventure Resort Marketing, LLC, (ARM) et al vs. B & W Resorts, Inc., dba Harmony Ridge Resort et al

Defendants' Motion for Judgment on the Pleadings is DENIED.

Legal Standard

A party may bring a motion for judgment on the pleadings ("MJOP") after filing an answer and the time to demurrer has expired. Code Civ. Proc. § 438(b)(1) and (f); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548. If the moving party is the defendant, then a MJOP is limited to the grounds the court has no jurisdiction over the subject of the cause of action or the complaint fails to state a cause of action. Code Civ. Proc. § 438(c)(1)(B). The grounds for a MJOP shall appear on the face of the pleading or from any matter judicially noticed. Code Civ. Proc., § 438(d). Essentially, a MJOP performs the same function as a general demurrer, i.e., it attacks only the defects disclosed on the face of the pleading or by matters that are judicially noticed. *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999. "In deciding or reviewing a judgment on the pleadings, all properly pleaded material facts are deemed to be true, as well as all facts that may be implied or inferred from those expressly alleged." *Fire Ins. Exch. v. Super. Ct.* (2004) 116 Cal.App.4th 446, 452.

Discussion

Defendants argue the defamation claim is insufficiently pled. The Court disagrees.

"Defamation "involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." *Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970. False statements charging the commission of crime, or tending directly to injure a plaintiff in respect to his or her profession by imputing dishonesty or questionable professional conduct are defamatory per se. *Burrill v. Nair* (2013) 217 Cal.App.4th 357, 383.

At bar, the Complaint alleges Defendant Bill Sinor, Sr. had entered into a sales/marketing agreement with Plaintiffs Adventure Resort Marketing, LLC, and Sean Graham. Complaint, Ex. A. The Complaint also alleges Defendant Sinor, Sr. wrote communications in 2023 which state Plaintiffs were "involved in a conspiracy to commit fraud and embezzle funds and resources" and "illegal acts" in relation to business bank accounts in connection to Plaintiff Graham's marketing/sales position with Defendants. Complaint, Exs. B-C. Finally, the Complaint alleges these written communications were "published in a public forum, distributed to business associates of Plaintiff Graham and read by his peers." Complaint, Attachment One.

The Complaint sufficiently alleges a cause of action for defamation: false publication in a public forum and distributed to business associates, tending to inure Plaintiffs with respect to their profession by imputing dishonesty and questionable professional conduct.

Next, Defendants argue the defamation cause of action is time barred. The Court again disagrees.

Defendants assert the claim is time-barred, because the writings incorporated into the Complaint are dated in August 2023, and the Complaint was filed in June 20, 2025. See Code Civ. Proc., § 340(c) (one-year limitations period for defamation). However, a statute of limitations defense must appear clearly on the face of the complaint; it is not enough that the claim might be time-barred. *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1316.

The Complaint does not allege the writings from August, 2023 are the publications the claim for defamation is based on. Rather, it alleges *after* the writings were made in August, 2023, they were published in a public forum. Therefore, the statute of limitations defense does not appear clearly on the face of the Complaint, because it may be implied from the express allegations that the defamatory statements were made after the writings and before the statute of limitations period ran. *Fire Ins. Exch., supra,* 116 Cal.App.4th at 452; *E-Fab, Inc., supra,* 153 Cal.App.4th at 1316. Thus, the Court cannot find the claims are time-barred based on the pleadings.

Accordingly, Defendants' Motion for Judgment on the Pleadings is hereby DENIED.

10. CU0002429 Hunter, Carol Jean v. Rodriguez, Linda

Appearances required for the Order to Show Cause re Contempt – Arraignment.

11. CU0002591 Melanie Gans-Prosser et al vs. Lake of the Pines Association, a California mutual benefit corporation et al

Defendant Lake of the Pines Association's motion to set aside default is GRANTED pursuant to CCP 473(b).

Code of Civil Procedure section 473(b) provides in pertinent part:

"The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken….[T]he court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment…. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties."

Here, the Court finds the default was entered appropriately in that the Declaration filed by Defendant's attorney Joceline M. Herman on March 17, 2026 did not comply with CCP 430.41.

CCP 430.41 pertains to the mandate a party intending to demurrer to a complaint meet and confer in advance of filing a demurrer. Although entitled "Declaration…Pursuant to CCP 430.41", the declaration itself asserts it seeks to obtain a "thirty (30) day extension of time to file a **responsive pleading**, pursuant to California Coe of Civil Procedure section 430.41, subd. (a)(2)." See, Declaration, Pg. 2, ll. 10-12 (emphasis added), yet nowhere in the declaration does it indicate Defendant intends to file a demurrer, motion to strike or motion for judgment on the pleadings. Accordingly, the default was entered appropriately as CCP 430.41 does not afford an extension for any type of responsive pleading, and counsel's declaration was broader than the code section contemplates. The Court notes, despite Plaintiff's assertion Defendant filed a "CIV-141", this optional judicial council form was not utilized by counsel for Defendant which, had it been, could have prevented entry of default. Moreover, the filing of a declaration cannot be interpreted as the Court's acceptance of the assertions contained therein or agreement with same. The Court has no ability to reject the filing of such a declaration, yet such in no way equates with agreement with its contents or assertions.

Nevertheless, it appears from the pleadings, the default entered here was due to counsel's mistake. Such is attested to by counsel (despite the fact counsel may not have completely understood the reasoning for entry of default until now), the request has been filed within six months from entry of default, and the proposed responsive pleading has been included as an exhibit to counsel's declaration.

Accordingly, the Motion to Set Aside is hereby GRANTED. The default entered on March 18, 2026 is hereby vacated.

In relation to the mandate the Court award Plaintiffs reasonable costs and fees, the Court finds reasonable costs and fees incurred by Plaintiffs to be the total sum of $2,000.00. Said amount shall be paid to Plaintiffs within ten (10) days of notice of entry of this order.

12. FL0000421 Cohen, Micah v. Cohen, Philip Alexander

Parties ordered to appear to show cause as to why they should not each be sanctioned $250.00 for failing to file a partial Judgment including termination of status as ordered on April 25, 2025.