

"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession."

OCBA Civility Guidelines

"The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. Incivility between counsel is sand in the gears."
(*Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 747.)

TENTATIVE RULINGS
Judge Kimberly Knill, Dept. C31

- **The court encourages remote appearances to save time, reduce costs, and increase public safety.** Go to www.occourts.org/media-relations/civil.html and click on the blue box that says, "Click here to appear/check-in for Civil Small Claims/Limited/Unlimited/Complex remote proceedings." Navigate to Department C31 Judge Kimberly Knill.
- All hearings are open to the public.
- If you desire a transcript of the proceedings, you **must** provide your court reporter (unless you have a fee waiver and request a court reporter in advance).
- Call the other side. If **everyone** submits to the tentative ruling, call the clerk at **657-622-5231**. Otherwise, the court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

No filming, broadcasting, photography, or electronic recording of the video session is permitted pursuant to California Rules of Court, rule 1.150, and Orange County Superior Court rule 180.

HEARING DATE: Friday, 7/11/2025 10:00 AM

#	Case Name	Tentative
1	Golden Ivy Marketing vs. Song 30-2022- 01266371-CU- BT-CJC	Application of Angel T. Davis to Appear Pro Hac Vice The application of attorney Angel T. Davis to appear pro hac vice as counsel for Defendants Dandan Song, Peiran Li, The One Pioneer, LLC, Atlas Creative Group, LLC, Lishi Ji, and Jennifer Wong s DENIED. Applicant has not complied with California Rules of Court, rule 9.40, subdivision (c)(1), service upon the State Bar of California's San Francisco office and attaching proof of payment. Clerk to give notice.
2	California State Labor Commissioner, Division of	Motion to be Relieved as Counsel of Record for Plaintiffs

	Labor Standards Enforcement, Department of Industrial Relations, State of California vs. Dealerclick LLC 30-2023-01360615-CU-WT-CJC	<p>The motion of attorney Houman Fakhimi to withdraw as attorney of record for Defendants Kamran Razaghi and Dealerclick, LLC is GRANTED. (Code Civ. Proc., § 284, CRC 3.1362.)</p> <p>Moving attorney is to give notice. Withdrawal will become effective upon moving attorney's filing of a proof of service upon the client.</p>
3	Mermelstein vs. Angels Baseball LP 30-2023-01328120-CU-PO-CJC	<p>Defendants' Motion to Continue Trial and Trial-Related Dates</p> <p>Defendants Angels Baseball LP, Moreno Baseball LP, Moreno Baseball Companies, Inc., and Taylor Ward's motion to continue trial is GRANTED.</p> <p>Pursuant to California Rules of Court, rule 3.1332, the court finds good cause for a one-time continuance of trial due to the recent addition of Defendant Taylor Ward to this action.</p> <p>Trial is continued to 1/23/2026 at 11:30 AM. All trial-related dates, including discovery dates, to run with the new trial date.</p> <p>Defendants to give notice.</p>
4	Progressive Select Insurance Company vs. Garduno 30-2023-01343441-CU-PA-CJC	<p>Defendant's Motion to Set Aside Default Judgment</p> <p>Defendant Christopher E. Garduno's motion to set aside default judgment is DENIED.</p> <p>Defendant seeks relief under Code of Civil Procedure section 473, subdivision (b), which has a six-month time limit for relief. Judgment was entered on 5/17/2024 and Defendant filed his Motion on 3/5/2025. The motion is untimely.</p> <p>The motion is also procedurally defective, because defendant did not file a proof of service as required by Code of Civil Procedure section 1005.</p> <p>Clerk to give notice.</p>
5	Tran vs. Vazquez 30-2024-01434497-CU-PA-CJC	<p>Phuong Ngo's Motion to Substitute Plaintiff</p> <p>The motion to continue pending action in decedent's successor-in-interest's name is GRANTED.</p> <p>"A pending action or proceeding does not abate by the death of a party if the cause of action survives." (Code Civ. Proc., § 377.21.)</p> <p>"On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's</p>

		<p>personal representative or, if none, by the decedent's successor in interest." (Id., § 377.31.)</p> <p>Phuong Ngo submitted a declaration which complies with the requirements set forth in Code of Civil Procedure section 377.32.</p> <p>It is ORDERED Phuong Ngo is substituted as plaintiff in place of Dien Xuan Tran.</p> <p>Moving party to give notice.</p>
6	Miskinyar vs. Brunswick Corporation 30-2024-01416870-CU-PL-CJC	<p>Defendant's Motion to Compel Responses to Form Interrogatories and Request for Monetary Sanctions</p> <p>Defendant Brunswick Corporation's unopposed Motion to Compel Responses to Form Interrogatories, set one, is GRANTED.</p> <p>Plaintiff failed to timely serve responses to Defendant's Form Interrogatories, set one. (Davis Decl., ¶ 2.)</p> <p>Plaintiff is ORDERED to provide verified responses to Defendant's Form Interrogatories, set one, without objections within 20 days.</p> <p>Plaintiff and his counsel are ORDERED to pay \$307 in sanctions to Defendant within 20 days. (Code Civ. Proc., § 2030.290, subd. (c).)</p> <p>Defendant to give notice.</p> <p>Defendant's Motion to Compel Responses to Requests for Production of Documents and Request for Monetary Sanctions</p> <p>Defendant Brunswick Corporation's unopposed Motion to Compel Responses to Requests for Production, set one, is GRANTED.</p> <p>Plaintiff failed to timely serve responses to Defendant's Requests for Production, set one. (Davis Decl., ¶ 2.)</p> <p>Plaintiff is ORDERED to provide verified responses to Defendant's Request for Production, set one, without objections, and to produce responsive documents, within 20 days.</p> <p>Plaintiff and his counsel are ORDERED to pay \$307 in sanctions to Defendant within 20 days. (Code Civ. Proc., § 2031.300, subd. (c).)</p> <p>Defendant to give notice.</p>
7	Marriott Hotel Services, LLC vs. RingCentral, Inc.	<p>Defendant's Motion to Strike Portions of First Amended Complaint</p> <p>Defendant Ringcentral, Inc.'s motion to strike portions of plaintiff Marriott Hotel Services, LLC's First Amended Complaint ("FAC") is DENIED.</p>

<p>30-2024-01429620-CU-BC-CJC</p>	<p>Defendant's Objection to the Declaration of Andy Lakefish is SUSTAINED. (Code Civ. Proc., § 437, subd. (a) ["The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice."])</p> <p>Defendant moves to strike the second paragraph of Exhibit F and all portions of the FAC which reference the second paragraph of Exhibit F which states:</p> <p>"We appreciate your willingness to partner and explore how we may rebook new dates, and leverage our current liability in creative ways. We appreciate your desire to ensure this is a win/win."</p> <p>(FAC, ¶ 28, Ex. F.)</p> <p>Defendant moves to strike on the grounds the second paragraph of Exhibit F violates Evidence Code sections 1152 and 1154 and the litigation privilege pursuant to Civil Code section 47.</p> <p><u>Evidence Code sections 1152 and 1154:</u></p> <p>Section 1152, subdivision (a), provides, "Evidence that a person has, in compromise ... furnished or offered or promised to furnish money or any other thing, act or service to another who has sustained or will sustain ... loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it." Section 1154 provides, "Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act, or service in satisfaction of a claim, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove the invalidity of the claim or any part of it."</p> <p>"It is well settled, however, that the rule which excludes offers of compromise does not apply to statements which are in nowise connected with any attempt of compromise or are statements of fact independent of an offer of compromise ... Moreover, the statements of a party against whom a claim is made, that he is willing to settle the claim, when not connected with an offer of compromise, may be proved as an admission against interest. [¶] In considering whether a person's statement amounts to an ordinary admission or constitutes an offer of compromise, the intention of the party is dispositive ... [I]f the party making the proposal apparently intended to make [n]o concessions but to exact all that he deemed himself entitled to, the proposal is an ordinary admission against interest and not an attempt to compromise." (<i>Moving Picture etc. Union v. Glasgow Theaters, Inc.</i> (1970) 6 Cal.App.3d 395, 402 [cleaned up]; see also <i>Volkswagen of America, Inc. v. Superior Court</i> (2006) 139 Cal.App.4th 1481, 1494 (<i>Volkswagen</i>) ["If the statement was not intended as a concession but as an assertion of all that he</p>
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		<p>deemed himself entitled to, it is not an offer of compromise.”] [cleaned up].)</p> <p>“Furthermore, Evidence Code sections 1152 and 1154 are not absolute bars to admissibility, since a settlement document may be admissible for a purpose other than proving liability.” (<i>Volkswagen of Am., Inc. v. Superior Ct.</i> (2006) 139 Cal.App.4th 1481, 1491.)</p> <p>Here, the FAC alleges Defendant cancelled the event by email dated January 12, 2022, which is attached to the FAC as Exhibit F. (FAC, ¶ 28, Ex. F.) The subject of Exhibit F is “RingCentral Cancellation Request” and the email seeks cancellation. Exhibit F does not contain any offer or show a dispute existed between the parties when Defendant sent the email. Therefore, based on the FAC and Exhibit F, the Court cannot find the second paragraph of Exhibit F contains settlement communications subject to be stricken pursuant to sections 1152 and 1154.</p> <p><u>Litigation Privilege under Civil Code section 47:</u></p> <p>The litigation privilege in section 47 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.” (<i>Silberg v. Anderson</i> (1990) 50 Cal.3d 205, 212 (citations omitted).) “A prelitigation communication is privileged only when it relates to litigation that is contemplated in good faith and under serious consideration.” (<i>Action Apartment Association, Inc. v. City of Santa Monica</i> (2007) 41 Cal.4th 1232, 1251 (citations omitted).) Protection of prelitigation statements “only arises at the point in time when litigation is no longer a mere possibility, but has instead ripened into a <i>proposed proceeding</i> that is actually contemplated in good faith and under serious consideration as a means of obtaining access to the courts for the purpose of resolving the dispute.” (<i>Edwards v. Centex Real Estate Corp.</i> (1997) 53 Cal.App.4th 15, 39.)</p> <p>Exhibit F, an email cancellation request from Defendant, shows no threat of litigation or any indication the parties were contemplating litigation at the time it was sent.</p> <p>The court cannot find the litigation privilege applies to the second paragraph of Exhibit F.</p> <p>Moving Defendant to give notice.</p>
8	Momeny vs. Ahmadi 30-2024-01390052-CU-BC-CJC	<p>Defendant’s Motion for an Order Imposing Sanctions</p> <p>Defendant/Cross-Complainant Majid Ahmadi’s motion for terminating sanctions is DENIED.</p>

		<p>Terminating sanctions are appropriate when the “violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules.” (<i>Mileikowsky v. Tenet Healthsystem</i> (2005) 128 Cal.App.4th 262, 279.)</p> <p>Momeny has responded to discovery, so terminating sanctions are not appropriate.</p> <p>As Ahmadi is now self-represented, Momeny is ORDERED to serve his discovery on Ahmadi directly within 5 days. Failure to do so may result in sanctions for failing to comply with a court order.</p> <p>Clerk to give notice.</p>
9	Security National Guaranty, Inc. vs. Makhijani 30-2023-01347034-CU-BC-CJC	<p>Defendants Mahender Makhijani, Evariste Group, LLC, Evariste Group Manager, LLC, Gerald Marcil, and Andrew Stupin’s Motion for Summary Judgment, or in the Alternative, Motion for Summary Adjudication</p> <p>Defendants Mahender Makhijani, Evariste Group, LLC, Evariste Group Manager, LLC, Gerald Marcil, and Andrew Stupin’s (Evariste Defendants) Motion for Summary Judgment/Adjudication as to plaintiff’s First Amended Complaint (FAC) is DENIED.</p> <p>The Evariste Defendants’ request for judicial notice (ROA 832) is GRANTED.</p> <p>The Evariste Defendants failed to specifically state each cause of action to be summarily adjudicated in their notice of motion and failed to separately identify each supporting material fact for each cause of action in their separate statement in violation of California Rules of Court, rule 3.1350(b) and (d)(1). They have waived their right to seek summary adjudication.</p> <p><u>Damages as to First, Third, Fourth, Fifth, Sixth, and Ninth Causes of Action</u></p> <p>Damages is an essential element of the first cause of action for Violation of Penal Code section 496, subdivision (c); fourth cause of action for conspiracy to breach fiduciary duty; fifth cause of action for aiding and abetting breach of fiduciary duty; sixth cause of action for breach of contract; and ninth cause of action unjust enrichment and restitution. (See Pen. Code, § 496, subd. (c); <i>Nasrawi v. Buck Consultants LLC</i> (2014) 231 Cal.App. 4th 328, 343 [aiding and abetting breach of fiduciary duty]; <i>RBC Cap. Markets, LLC v. Jervis</i> (Del. 2015)129 A.3d 816, 861 [Delaware law aiding and abetting breach of fiduciary duty]; <i>Oasis West Realty, LLC v. Goldman</i> (2011) 51 Cal.4th 811, 821 [breach of</p>

contract]; *Humanigen, Inc. v. Savant Neglected Diseases, LLC* (Del. Super. 2020) 238 A.3d 194, 202 [Delaware law breach of contract]; *First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1663 [unjust enrichment].)

Plaintiff alleges the Evariste Defendants conspired to steal \$37 million from their joint venture, SNG Evariste, LLC (Company), through a fraudulent loan from co-defendant Nano Banc (Nano Banc Loan); failed to sell the Company's only asset, 40 acres of ocean-front land on the Monterey Peninsula (Property), or develop the Property on behalf of the Company; and failed to conduct any member vote despite taking Major Actions. (FAC, ¶¶ 32, 33, 38, 39, 56, 77, 83, 90.)

The Evariste Defendants contend these causes of action fail because plaintiff has suffered no damages. (Notice of Motion, p. 1.)

Plaintiff submits the declaration of Eric Sussman, its expert in commercial real estate development, who opines the Nano Bank Loan was inconsistent with the MOU, damaged plaintiff's business interests, and exposed Plaintiff to unnecessary risks. (Sussman Decl., ¶¶ 46-64.) Sussman also opines the member vote requirement is critical because it provides plaintiff with prior notice of actions the Evariste Defendants intend to take on the Company's behalf and helps ensure that the Evariste Defendants (who manage and control the Company) act in the best interest of the Company. (Sussman Decl., ¶¶ 53-57.) Thus, by disregarding the member vote requirement, the Evariste Defendants deprived plaintiff of critical procedural and substantive rights. (See Sussman Decl., ¶¶ 53-57.) For purposes of this motion, this is sufficient to create a triable issue as to damages for the first, fourth-sixth, and ninth causes of action.

Third Cause of Action for Breach of Fiduciary Duty

As to the third cause of action for a breach of fiduciary duty, damages is not an essential. This court previously held (ROA 691) since the Company is a Delaware limited liability company, Delaware law applies to Plaintiff's breach of fiduciary duty claim under the internal affairs doctrine. (See *Lidow v. Superior Ct.* (2012) 206 Cal.App.4th 351, 358-59; Corp. Code, § 17708.01, subd. (a)(1); see also *McDermott Inc. v. Lewis*, 531 A.2d 206, 215 (Del. 1987.) Under Delaware Law, a claim for breach of fiduciary duty "has only two formal elements: (i) the existence of a fiduciary duty that the defendant owes to the plaintiff and (ii) a breach of that duty." (*Metro Storage Int'l LLC v. Harron* (Del. Ch. 2022) 275 A.3d 810, 840-841; *Skye Mineral Investors, LLC v. DXS Capital (U.S.) Limited* (Del. Ch., July 28, 2021, No. CV 2018-0059-JRS) 2021 WL 3184591, at *18 ["Damages, of course, are not an element of a claim for fiduciary breach under Delaware

law.”].) Once a plaintiff has proved the two elements “the court may fashion a remedy to address the breach of fiduciary duty, including by an award of nominal damages.” (*Skye Mineral Investors, LLC, supra*, 2021 WL 3184591, at *18.)

The Evariste Defendants have failed to meet their initial burden as to the third cause of action. Even if damages were an essential element of breach of fiduciary duty, the evidence of damages discussed above is applicable to the breach of fiduciary cause of action as well. Plaintiff has met its burden of demonstrating a triable issue as to the third cause of action.

First Cause of Action for Violation of Penal Code section 496, subdivision(c)

Penal Code section 496, subdivisions (a) and (c) make it a crime to “buy[] or receive[] any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained. . .,” and provides, “[a]ny person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney’s fees.” The California Supreme Court has construed Penal Code section 496 broadly, consistent with the statutory language, and has held that applies to cases involving the “fraudulent diversion of a partnership funds.” (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361-367.)

“While section 496(a) covers a spectrum of impermissible activity relating to stolen property, the elements required to show a violation of section 496(a) are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (ii) the defendant received or had possession of the stolen property.” (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126.)

The Evariste Defendants argue the first cause of action for violation of Penal Code section 496 fails for an additional reason. Defendants contend plaintiff has no evidence of a theft, which requires proof of criminal intent on the part of the defendant beyond mere proof of nonperformance or actual falsity. Defendants contend at best this is a breach of contract or fiduciary duty claim, which plaintiff has already alleged.

To establish a plaintiff has no evidence of an element of a cause of action, a defendant must “present evidence, and not simply point out that the plaintiff does not possess, and cannot

reasonably obtain, needed evidence.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854 [footnote omitted].)

The Evariste Defendants alternatively argue plaintiff has no direct claim for the theft as a member of the Company and only the Company itself can bring the claim. Defendants cite no authority to support their contention. Members of an LLC may bring derivative actions on behalf of the entity. (*PacLink Communications Int'l, Inc. v. Sup.Ct. (Yeung)* (2001) 90 Cal.App.4th 958, 964-965.) Here, plaintiff brings this cause of action derivatively on behalf of the Company. (FAC, ¶ 55.)

The Evariste Defendants have failed to meet their initial burden on this cause of action.

Seventh Cause of Action for Constructive Trust

The Evariste Defendants argue the seventh cause of action for constructive trust is not a valid cause of action; rather, it is an equitable remedy. They contend plaintiff is not entitled to the remedy of a constructive trust because its underlying claims all fail.

First, this court previously held the weight of authority suggests a constructive trust may be asserted as a cause of action. (ROA 691, citing *Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 659, fn. 2.) Second, as discussed above, the Evariste Defendants have not established plaintiff’s underlying claims all fail. The Evariste Defendants have failed to meet their initial burden on this cause of action.

Eighth Cause of Action for Accounting (Failure to Comply with Demand)

This court previously held plaintiff’s cause of action for accounting is a demand for books and records under Corporations Code section 17704.10. (ROA 699.) The Evariste Defendants contend this cause of action fails because all books and records have been provided. (Motion, p. 21.) However, the Evariste Defendants include no facts in their separate statement nor provide any evidence to support their contention. The Evariste Defendants have failed to meet their initial burden on this cause of action.

Eleventh Cause of Action for Declaratory Relief

Plaintiff alleges an actual controversy has arisen and now exists between plaintiff and the Company, on one hand, and defendants, on the other hand, about the Nano Banc Loan, including the various instruments therein, including the Promissory Note, Deed of Trust, and Subordination Agreement. Plaintiff contends the Deed of Trust and the Subordination Agreement are void or voidable for lack of capacity and as a

	<p>result of fraud and other illegal conduct as alleged in detail above. As a result, the Deed of Trust is not a valid security interest against the Property, and on that basis, both the Deed of Trust and the related Subordination Agreement should be cancelled and expunged. Upon information and belief, defendants contend the Deed of Trust is a valid security interest against the Property and the Subordination Agreement was properly recorded against the Property. (FAC, ¶ 115.)</p> <p>The Evariste Defendants argue there is no valid basis for declaratory relief since all of plaintiff's underlying claims lack merit. (See <i>The Ratcliff Architects v. Vanir Constr. Mgmt., Inc.</i> (2001) 88 Cal.App.4th 595, 607 [holding that where claim for declaratory relief depends on other causes of action, and plaintiff fails to state a claim sufficient to recover on any of the other causes of action, the claim for declaratory relief also fails].)</p> <p>The Evariste Defendants have failed to establish all plaintiff's claims lack merit. Accordingly, they have failed to meet their initial burden on this cause of action.</p> <p>Plaintiff to give notice.</p>
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