TENTATIVE RULINGS

Judge Michael J. Strickroth

DEPT C15

Department C15 hears Law and Motion matters on Mondays at 1:45 pm

Court Reporters: Official court reporters (i.e. court reporters employed by the Court) are NOT typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- **Civil Court Reporter Pooling; and**

- **For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.**

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 10:00 am in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5215. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: **Department C15 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)1.)**

PUBLIC ACCESS: **In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.**

TENTATIVE RULINGS

Date: May 20, 2024

#	Case Name	Tentative
1	**Iwamoto vs Lai** **2021-01193481**	**Case Management Conference** This Case Management Conference is to be heard with the Case Management Conference in related case #2 below.
2	**Lai vs Iwamoto** **2021-01229374**	**Demurrer to Complaint** **Defendants Wayne Iwamoto and Susan James Iwamoto, aka Susan James's Demurrer to the Complaint is OVERRULED as to the 1st cause of action; and SUSTAINED, with 20 days leave to amend, as to the 2nd through 4th causes of action.** As to the 1st cause of action for breach of contract, the cause of action is sufficiently pled. "The standard elements of a claim for breach of contract are: '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom.'" *Wall Street Network, Ltd. v. New York Times Co*. (2008) 164 Cal.App.4th 1171, 1178. "If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307. Here, Plaintiff alleges that the parties entered into a written lease agreement on May 7, 2016 (which is attached as Exhibit A); that the parties entered into a written amendment to the lease in January 2020; that Defendants were required to pay an additional $400 per month in rent from August 1, 2020 through October 2020 but failed to do so; that Defendants were required to pay the agreed upon rent

		of $4,400 per month from November 1, 2020 through April 2020 but failed to do so; that Defendants were required to pay the agreed upon rent of $4,500 per month from May 1, 2020 through September 2020 but failed to do so; that from August 1, 2020 until September 1, 2021, Defendants refused the pay the sum of $50,100 in rent money; that Plaintiff has fully performed under the lease agreement and amendment; that Defendants breached their contractual obligations to pay rent; that Defendants also breached the lease agreement and amendment by constructing unpermitted and unplanned structures at the property without Plaintiff's consent, failing to maintain the property, refusing to allow Plaintiff to enter the property to maintain the fruit trees on the property and to make repairs to the property, engaging in commercial horse boarding, commercial truck storage, and other businesses and commercial activities, and causing nuisance at the property; and that Plaintiff has been damaged in excess of $650,000 as a result thereof. (Complaint, ¶¶ 6, 7-13, 16-31, and 34 Exh. A.) As to the 2nd cause of action for breach of implied covenant of good faith and fair dealing, it is superfluous as it based on the same facts as the breach of contract cause of action. The Complaint alleges that the lease agreement and the amendment include an implied covenant of good faith and fair dealing to not do anything that deprives the other parties of the benefits of the agreements; that Defendants breached their covenant of good faith and fair dealing by refusing to pay rent, refusing to allow Plaintiff and/or his representative entry on the property, constructing unpermitted structures on the property, engaging in business and commercial activities, constructing unapproved structures, modifying the structure, and committing nuisances on the property; that Defendants failed and refused to discharge their responsibilities under the agreements; and that Plaintiff has been damaged in excess of $650,000 as a result thereof. (Complaint, ¶¶ 36-38.) A 'breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself' and it has been held that 'bad faith implied unfair dealing rather than mistaken judgment…Thus, allegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contractual term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." *Careau & Co.*

		v. Security Pacific Business Credit, Inc. (1990) 222 Cal.App.3d 1371, 1394-1395. "If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damage or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated." *Id.* at 1395. The 3rd cause of action for conversion the cause of action is not sufficiently pled. "'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.' [citations omitted.]" *Plummer v. Day/Eisenburg, LLP* (2010) 184 Cal.App.4th 38, 50. Here, Plaintiff alleges that the lease agreement and amendment require payment of money that is exclusively intended for Plaintiff; that Defendants claimed ownership and interest in money that belongs to Plaintiff by refusing to pay the money to Plaintiff; and that Plaintiff has sustained damages in excess of $50,000 as a result. (Complaint, ¶¶ 41-44.) In essence, Plaintiff is alleging that Defendants converted his money by failing to pay rental monies owed him. "[A] mere contractual right of payment, without more, will not suffice." *Plummer, Id.*, at 50. Further, money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment. A generalized claim for money is not actionable as conversion. *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395. The 4th cause of action for unjust enrichment is not sufficiently pled. Generally, one who is unjustly enriched at the expense of another is required to make restitution. The elements of a cause of action for unjust enrichment are simply stated as 'receipt of a benefit and unjust retention of the benefit at the expense of another. *Tufeld Corp. v. Beverly Hills Gateway, L.P.* (2022) 86 Cal.App.5th 12, 31–32. Here, the Complaint alleges that the lease agreement and amendment require Defendants to refrain from engaging in commercial activities; that Defendants engaged in commercial business and business activities for profit at the property without any permits and/or approval from any governmental agencies or Plaintiff as required; that Defendants received benefits and unlawful money and profits from using the property for unintended and unapproved commercial business and activities at Plaintiff's expense; and equity and good conscious require restitution against Defendants.

		(Complaint, ¶¶ 46-49.) The written lease agreement and amendment which are attached to the Complaint does not prohibit from Defendants from engaging in commercial activities as Defendants contend. Rather, section 20 of the amendment states "Landlord agrees Tenant shall be allowed to Assign or Subletting of all or any part of the Premises to Residential, **Commercial,** or Agricultural purposes". (Complaint, Exh. A, Amendment, Section 20.) As such, the allegation Defendants engaged in commercial activity without Plaintiff's permission and received benefits at Plaintiff's expenses is contradicted by the express terms of the contract and the facts in the exhibit take precedence. *Holland v. Morse Diesel Int'l, Inc.* (2001) 86 Cal.App.4th 1443, 1447. Demurring Party is to give notice. **Case Management Conference** If the parties submit on the tentative and/or the tentative becomes the order of the court, the Case Management Conference is continued to February 3, 2025, at 8:30 AM in Department C15. If the parties do not submit on the tentative or the tentative does not become the order of the court, the parties through counsel are required to be present for the Case Management Conference, either remotely or in the courtroom.
3	**The Center for Scientific Integrity vs Regents of the University of California**	**Case Management Conference** **OSC re: Monetary Sanctions** This Case Management Conference/ Order to Show Cause hearing is to be heard with the motion in related case #4 below.

	2023-01307178	
4	Iloh vs Regents of the University of California 2021-01197536	**Motion to Strike – Anti-SLAPP** **Real Party in Interest The Center for Scientific Integrity's ("CSI") Special Motion to Strike Complaint Under *Code of Civil Procedure* section 425.16 is GRANTED.** **Summary of Amended Petition** Petitioner Constance Iloh ("Petitioner") filed an Amended Petition seeking adjudication of issues related to application of the California Public Records Act ("CPRA") to disclosure of correspondence in university emails used by academic professionals employed by public institutions. On September 9, 2020, CSI made a public records request to Respondent Regents of the University of California ("UC"), seeking correspondence relating to four articles authored by Petitioner. Petitioner, an assistant professor at UCI, argues such correspondence should not be subject to a CPRA request because the correspondence does not relate to conduct of the public's benefit, Petitioner has a reasonable expectation of privacy, and the balance of interests favors nondisclosure to preserve academic freedom. Petitioner points to the exception in CPRA for personnel files, "the disclosure of which would constitute an unwarranted invasion of privacy," under *Government Code* section 6254(c), and asserts disclosure is not required where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record," under *Government Code* section 6255. Petitioner alleges her private correspondence does not relate to the "conduct of the public's business" pursuant to *Government Code* section 6252(e) to constitute a public record. She contends the four articles at issue were not published by the public institution employing Petitioner, but rather private academic journals, and were not related to the discharge of Petitioner's employment at UCI. **Legal Standard**

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." *Code of* Civil *Procedure* § 425.16(b)(1). An "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: . . . any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or . . . any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest. *CCP* § 425.16(e).

"Section 425.16 posits [] a two-step process for determining whether an action is a SLAPP." *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Id*. "A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)." *Id*. "If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." *Id*.

"[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have 'stated and substantiated a legally sufficient claim.'" *Navallier, Id.,* at 88. "Put another way, the plaintiff 'must demonstrate that 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.'" *Id*. at 88-89. "Only a cause of action that satisfies both prongs of the anti-SLAPP statute-i.e., that arises from protected speech or petitioning and lacks even minimal merit-is a SLAPP, subject to being stricken under the statute." *Id*.

<u>Analysis</u>

In its August 24, 2023 opinion in this case, the Court of Appeal held CSI met its burden as to prong one of the anti-SLAPP analysis

and remanded for this Court to conduct its analysis of prong two, discussed below.

"[U]nder the second prong (if the moving party met its burden), the responding party has the burden to establish that its challenged claims have at least minimal merit." *Third Laguna Hills Mutual v. Joslin* (2020) 49 Cal.App.5th 366, 371; *Baral v. Schnitt* (2016) 1 Cal.5th 376, 390.

The Court of Appeal previously held Petitioner failed to demonstrate a probability of prevailing for purposes of her motion for preliminary injunction. (1/13/23 Opinion in Case No. G060856 ["First Opinion".]) However, the legal standard for a preliminary injunction and an anti-SLAPP motion are not sufficiently identical for issue preclusion to apply. *Lam v. Ngo* (2001) 91 Cal.App.4th 832, 836 (collateral estoppel inapplicable because issues on preliminary injunction and anti-SLAPP motion not identical). Therefore, while this Court follows the appellate court's analysis regarding the scope of the CPRA as applied to the facts of this case in the First Opinion, it independently applies the legal standard under section 425.16 to the evidence submitted regarding the present motion. *People v. Barragan* (2004) 32 Cal.4th 236, 248 (discussing law of the case doctrine).

The evidence regarding this motion is substantially similar to the evidence before the Court in the motion for preliminary injunction. CSI submitted the same declaration of its co-founder, Ivan Oransky, in support of this motion and in opposition to the motion for preliminary injunction. (Nathu Decl., ¶ 3 and Ex. B.) The Oransky declaration was the only evidence submitted in support of the motion other than this Court's minute orders, hearing transcript, and a notice of ruling. (Nathu Decl., Exs. A, C, and D.) Petitioner's opposition largely relies on the pleadings and case law without citation to additional evidence. The only evidence submitted by Petitioner in opposition is the declaration of counsel explaining the reasons Petitioner's opposition was filed one day late. The Court exercises its discretion to consider Petitioner's late-filed opposition. CSI did not submit any additional evidence in reply.

Petitioner's opposition largely fails to address prong two of the anti-SLAPP analysis. Under prong two, CSI argues (1) Petitioner failed to demonstrate disclosure of the responsive records is prohibited by law, (2) no CPRA exemption applies to the records,

		and (3) Petitioner's petition seeks an unconstitutional prior restraint on the UC's speech. (Motion, pp. 13-18.) In opposition, Petitioner briefly addresses CSI's third argument while failing to substantially respond to the first two arguments. (Opp., pp. 9.) Nonetheless, the Court will address each of Movant's arguments below. First, Petitioner has failed to demonstrate the CPRA does not encompass the disputed records. As the Court of Appeal explained in the First Opinion, CSI's CPRA request encompassed "public records" subject to disclosure under the *Government Code* section 7920.530. The communications sought by CSI concern the use of public funds, including the question of whether Plaintiff engaged in plagiarism or other misconduct while an employee of a public institution. *California State University Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 825. Second, Defendant has demonstrated no CPRA exemption applies to the records. This issue was also addressed by the Court of Appeal in the First Opinion, where the appellate court rejected Plaintiff's assertion of the CPRA's "catchall exemption" under Government Code section 7922 because public interest favors disclosure of post-publication correspondence regarding the retracted academic publications. The First Opinion also rejected application of the personnel file exemption under *Government Code* section 7927.700. Here, the catchall exemption does not apply because CSI has shown that public interest favors disclosure because there is a strong public interest in learning how a publicly funded university responds to questions of misconduct by an employee. Petitioner fails to raise any argument regarding CPRA exemption in her opposition to this motion and has failed to show that a public interest in nondisclosure outweighs the public interest in favor of disclosure. Similarly, the personnel files exemption does not prevent disclosure because Petitioner has not shown the requests, which seek "correspondence," encompass Petitioner's personnel records and because the public interest in disclosure described above outweighs Petitioner's potential privacy interests. Finally, CSI contends Petitioner seeks to impose a prior restraint and such a restriction is only appropriate to further a state interest of the highest order where the publication threatens a fundamental

		interest. (Motion, 17:20-25.) Plaintiff responds the amended petition does not seek to impose a prior restraint, arguing, "the Petition seeks to preclude disclosure of certain documents pending a determination on whether the documents constitute public records or are otherwise exempted." (Opposition, 9:8-10.) The Court declines to determine whether the heightened standard for imposing a prior restraint applies here because Petitioner has not made a threshold showing her claim has merit under applicable provisions of the CPRA. Because Petitioner has failed to demonstrate a probability of prevailing on the merits of the amended petition, CSI's motion is granted. **Request for Attorney's Fees and Costs** CSI seeks to recover its attorney fees and costs related to this motion. *Code of Civil Procedure* section 425.16(c)(1) provides, "a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5." Although section 425.16(c)(1) refers to a prevailing "defendant," the Court is not aware of any legal authority precluding a prevailing real party in interest such as CSI from recovering its costs as a prevailing movant. Therefore, the Court construes the statute to allow real party in interest to recover its costs as a prevailing anti-SLAPP movant. *Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 999 (court looks to the legislative intent and seeks to avoid absurd and unreasonable results). *Catlin Ins. Co., Inc. v. Danko Meredith Law Firm, Inc.* (2022) 73 Cal.App.5th 764, 783-784, holds: "An Anti-SLAPP movant need not file a fee request along with its motion, but if it chooses to defer such a request there is no guarantee it will receive a ruling on fee entitlement in advance of the filing of a later fees motion or request for fees by cost memorandum…In the final analysis, *Sanabria, supra,* 92 Cal. App.

		4th 422, is controlling. Under the holding in that case, the Canko Appellants, having elected not to file section 425.16, subdivision (c)(1) motions along with their anti-SLAPP motions, were entitled to seek recovery of their attorney fees by (1) filing cost memoranda …(15 days after service of notice of entry of Catlin's voluntary dismissal) (*Sanabria,* at pp 425-426); or (2) filing motions for attorney fees no later than…(60 days after service of notice of the entry of Catlin's voluntary dismissal)…" Here, CSI requests "attorneys' fees and costs, in an amount to be determined upon noticed motion." (Reply, 8:16-19.) Because CSI has not requested a specific amount of attorney fees, the Court declines to determine CSI's entitlement to fees and costs at this time. However, CSI may promptly file a separately noticed motion for attorney fees. Accordingly, the Petition for Writ of Mandate, and Request for Declaratory and Injunctive Relief is DENIED and DISMISSED. Real Party in Interest is to prepare, file and serve a Proposed Judgment consistent with the Court's ruling above. The Court sets this matter for an Order to Show Cause hearing re Submission of the Proposed Judgment on 06/10/2024 at 8:30 AM in Department C15. If the Proposed Judgment is timely submitted, the Order to Show Cause will go off calendar. Moving party to give notice.
5	**Newport Beach Auto Gallery, Inc. vs Paul** **2023-01311191**	**Motion for An Order Permitting the Imposition of a Lien in Boardwalk vs Evan Paul Auto Capital, et al.** **Plaintiff's Motion for Lien against Evan Paul Auto Capital, LLC and/or Evan Paul as cross-complainants in the Pending Action *Boardwalk Management. LLC v. Evan Paul Auto Capital, LLC et al.,* Case No.: 30-2022-01297256-CU-BC-CJC is GRANTED.** If the defendant is a party to a pending action or special proceeding, the plaintiff may obtain a lien under this article,

		to the extent required to secure the amount to be secured by the attachment, on both of the following: (1) Any cause of action of the defendant for money or property that is the subject of the other action or proceeding, if the money or property would be subject to attachment if the defendant prevails in the action or proceedings. (2) The rights of the defendant to money or property under any judgment subsequently procured in the other action or proceeding, if the money or property would be subject to attachment. *Code of Civil Procedure*, § 491.410. The Paul Defendants filed a cross-complaint in the *Boardwalk v. Paul* case seeking money damages. If they prevail on their cross-complaint in *Boardwalk v. Paul*, the money would be subject to attachment. *Code Civ. Proc.,* §§ 487.010(a) and (c)(6), 488.480.) Thus, Plaintiff is entitled to file a lien on any money damages awarded in *Boardwalk v. Paul,* 2022-01297256, brought by cross-complainants Evan Paul Auto Capital, LLC and/or Evan Paul. Moving party is to prepare a court order consistent with the ruling above. Moving party to give notice. **Case Management Conference** On the Court's own motion, based upon a review of the register of actions for this case and noting demurrers to the pleadings currently on file, the Court continues the Case Management Conference to 09/23/2024 at 1:45 PM in Department C15. Clerk to give notice to plaintiff, plaintiff to give notice to all parties.
6	**Morales-Reyes vs**	**Demurrer to Complaint**

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<td>General Motors LLC

2023-01305492</td>
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Motion to Strike Portions of Complaint

Demurrer and Motion to Strike off calendar pursuant to telephone call on 05/10/2024.

Case Management Conference

Case Management Conference heard at 8:30 AM.

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<td>7</td>
<td>Evans vs General Motors, LLC

2022-01263398</td>
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Motion for Attorney Fees

Plaintiff Grant T. Evans’s Motion for Attorney Fees and costs/expenses is GRANTED in the amount of $35,357.50 for fees and $6,074.97 in costs/expenses.

If a plaintiff prevails in a Song-Beverly action, they “shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.” Civil Code, § 1794, subd. (d).

Plaintiff seeks $39,055.50 in attorney’s fees representing 78.9 hours billed at $495/hour. There is no dispute between the parties that Plaintiff is entitled to fees and costs/expenses. The issue in dispute is the <u>amount</u> of attorney’s fees.

Attorney’s fees

Courts use the lodestar adjustment method to determine the amount of attorney’s fees to award in Song-Beverly actions. Reynolds v. Ford Motor Co. (2020) 47 Cal.App.5th 1105, 1112. “[T]he lodestar is the basic fee for comparable legal services in the community.” Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132 (Ketchum). It is based on the careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case. [The California Supreme Court] expressly approved the use of prevailing hourly rates as a basis for the lodestar… In referring to “reasonable” compensation, [the

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Court] indicated that trial courts must carefully review attorney documentation of hours expended; "padding" in the form of inefficient or duplicative efforts is not subject to compensation. *Id*., at 1131-1132.

"The amount of attorney fees awarded pursuant to the lodestar adjustment method may be increased or decreased. Such an adjustment is commonly referred to as a 'fee enhancement' or 'multiplier.'" *Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 247. The lodestar may be adjusted based on factors which include (1) the complexity of the case, (2) the attorney's skills, (3) the results achieved; (4) whether the case was taken on a contingency. *Ketchum*, *supra,* at 1132-1134.

"The prevailing party and fee applicant bears the burden of showing that the fees incurred were ... reasonably necessary to the conduct of the litigation and were reasonable in amount.… [I]f the prevailing party fails to meet this burden, and the court finds the time expended or amount charged is not reasonable under the circumstances, then the court must take this into account and award attorney fees in a lesser amount." *Mikhaeilpoor*, *supra,* at 247; *Save Our Uniquely Rural Community Environment v. County of San Bernadino* (2015) 235 Cal.App.4th 1179, 1186 [It is not enough merely to state that counsel expended a certain number of hours in representing the client; fees motion must affirmatively demonstrate that the hours spent were reasonable and necessary].

"'[T]he lodestar method vests the trial court with the discretion to decide which of the hours expended by the attorneys were 'reasonably spent' on the litigation and to determine the hourly rates that should be used in the lodestar calculus." *Mikhaeilpoor*, *supra*, at 246-247. "The experienced trial judge is the best judge of the value of professional services rendered in his court…" *Ketchum*, *supra,* at 1132.

Hourly rate of compensation

The general rule is as follows: "The reasonable hourly rate is that prevailing in the community for similar work. The relevant 'community' is that where the court is located." *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 71.

		Through the declaration of Mark O'Connor, Plaintiff avers that 132.5 hours were spent litigating this case and provides billing invoices and the following table in support of the motion:

Evans v. GM

Exhibit 13 to Plaintiff's Motion for Attorney Fees

Worker Name	Rate	Time	Total Amount
David Womack (paralegal)	$150.00	15.7	$2,355.00
Kristin N. Arndt (paralegal)	$150.00	37.8	$5,670.00
Larry S. Castruita, Esq.	$550.00	2.1	$1,155.00
Mark O'Connor, Esq.	$700.00	33.2	$23,240.00
Matthew T. Goethals, Esq.	$350.00	43.7	$15,295.00
		GRAND TOTAL Fees	**$47,715.00**

To support the attorney rates claimed, O'Connor provided a sample of hourly rates for attorneys handling consumer law cases in San Diego, Los Angeles, Santa Ana, La Crescenta, San Francisco, and Oakland which range from $600 to 950 per hour. The information provided indicates these attorneys specialize in consumer litigation matters involving motor vehicle claims and they began practicing as early as 1983 and as recently as 2009. (O'Connor Decl., ¶ 20.) He declares he is aware of these hourly rates of other attorneys in California based on surveys in 2022 and 2017. (Id.) However, he does not state how this survey was conducted nor does he provide even one declaration from any of the listed attorneys. This information as hearsay.

O'Connor attaches to his declaration seven superior court cases where he received his requested hourly rate which ranged from $450-650. (See Haddad Decl., ¶16, Exhs. 4-11.) However, O'Connor did not attach cases in which he received the requested rate $700 per hour. O'Connor cites *Goglin v. BMW of North America, LLC* (2016) 4 Cal.App.5th 462, 473 where the Court of Appeal upheld counsel's hourly rate of $575/hour.

Plaintiff bears the burden of showing the hourly attorney rate sought is reasonable, but he does not meet that burden. In line with what was awarded in *Morris* and *Mikhaeilpoor* the hourly rates should be reduced as Defendant outlines above. Also, Plaintiff has not demonstrated this case is anything more than a garden-variety

lemon law case that resulted in a repurchase. This case was light on law and motion: other than the instant motion, Plaintiff filed four standard discovery motions in this case, and an *ex parte* application to compel the deposition of Defendant's person most qualified, which the court denied. The discovery motions were not fully briefed or heard because the CCP 998 was accepted before the motions were heard. A review of the litigation history and billing statement shows there were no depositions, no vehicle inspection, only one round of written discovery, and the case settled.

Based on the Court's own knowledge and familiarity with lemon law cases, the nature of the work performed in this case, and the evidence provided by the parties, the court finds the following hourly rates to be reasonable and commensurate with the prevailing rate charged by attorneys and paralegals of similar skill and experience in the community: O'Connor $650; Arndt $125; Womack $125; Castruita $500; and Goethals $300.

Amount of time spent

The billing records submitted by O'Connor indicate his firm spent 132.5 hours litigating this action. Defendant contends the time spent is excessive.

Defendant's opposition includes a table arguing the hours spent on many of the items in the billing statements should be reduced based on: (1) excessive billing; (2) administrative tasks; (3) business decision by associated counsel – Mr. Womack – to take on another client prior to engagement as opposed to litigating the case. Defendant objects to 88.5hours on these grounds.

When a party challenges the reasonableness of the number of hours billed, it has the burden "to point to the specific items challenged, with a sufficient argument and citations to the evidence." *Premier Medical Management Systems, Inc. v. Cal. Insurance Guarantee Association* (2008) 163 Cal.App.4th 550, 564. "General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." *Ibid.*

"Counsel should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." *Guillory v. Hill* (2019) 36 Cal.App.5th 802, 811. "Counsel may not submit a plethora of non-compensable, vague, block-billed attorney time entries and expect particularized, individual deletions as the only

		consequence." *Id*. at 812. Moreover, courts have held administrative tasks are not recoverable as attorney's fees. *Jones v. Metropolitan Life Insurance Co.* (N.D. Cal. 2012) 845 F.Supp.2d 1016, 1027. A review of the bill reveals entries for administrative tasks such as finalizing a document when the entry is separate from preparing and revising the same document. There are also duplicative billing entries, for example Arndt and Goethals together billed 22.2 hours to draft four motions to compel, which are generally template type motions in lemon law cases. Further, the motions were never heard. As another example, Arndt and Goethals collectively billed 8.8 hours to review Defendant's discovery responses. Accordingly, the Court reduces the hours of O'Connor and Goethals by 15.4 hour (20% of 76.9 hours). Lastly, Defendant objects to overbilling for time claimed for this fees motion. The Court does not find the hours sought for the instant motion to be excessive. **Summary of Lodestar** In summary, the reasonable hourly rates for Plaintiff's counsel is as follows: O'Connor $650; Goethals $300; Castruita $500; Arndt $125; Womack $125 Plaintiff claims a total of 132.5 hours. As discussed above, O'Connor's claim of 33.2 hours and Goethals' claim of 43.7 hours should be reduced by a total of 15.4 hours. Accordingly, Plaintiff's the reasonable compensation for his counsel is $35,357.50 as outlined below: • O'Connor: $650 * 26.2 hours = $17,030 • Goethals: $300 * 35.3 hours $10,590 • Castruita: $500 * 2.1 hours = $1,050 • Arndt: $125 * 37.8 hours = $4,725 • Womack: $125 * 15.7 hours = $1,962.50 **Multiplier to the Lodestar** Plaintiff seeks a 1.5-2.0 multiplier on the attorneys' fees arguing it is warranted because his attorney achieved an extraordinary

		outcome by obtaining significant civil penalties under the Song Beverly Act and the contingent basis of the litigation. A multiplier to the lodestar is not warranted. This appears to be a routine lemon law case, with no unusual facts or novel legal issues requiring exceptional skill. The availability of statutory fees for Song-Beverly cases significantly reduces the risk associated with working on contingency. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1174-1175. Therefore, the request for a multiplier is denied. **Costs** Plaintiff filed a memorandum of costs on 08/25/2023 (ROA 119, 121) in the amount of $6,074.97 and attached as an exhibit to the Motion. (Compendium of Exhibits (ROA 132), Ex. 14.) While Defendant makes arguments in its opposition against Plaintiff's request for costs and expenses, Defendant did not file a Motion to Strike or Tax Costs. A motion to strike or tax costs must be served and filed within 15 days after service of the costs memorandum. *California Rules of Court* rule 3.1700(b)(1). Failure to file the motion waives any objection to the costs claimed in the memorandum of costs. *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290. Plaintiff served the memorandum of costs on Defendant via email on 08/25/2023. Therefore, Defendant's deadline to file a motion to strike or tax costs was 09/11/2023. Accordingly, Defendant's objections to the costs have been waived. Therefore, Plaintiff is awarded $6,074.97 in costs. In sum, Plaintiff's motion for attorney fees and costs/expenses is GRANTED in the amount of $35,357.50 in fees and $6,074.97 in costs/expenses, for a total of $41,432.47. Plaintiff to give notice.

8	**DFB Portal LLC vs Marco Fine Arts** **2023-01315041**	**Application for Right to Attach Order/Writ of Attachment** **Plaintiff's Writ of Attachment is CONTINUED to June 17, 2024, at 1:45 PM in Department C15.** Defendant has filed an untimely opposition, however, the Court, in its discretion, will consider the opposition. *California Rules of Court*, Rule 3.1300(d). However, the Court will continue the hearing to allow Plaintiff to file a reply. Plaintiff is to file any reply five court days before the new date. Plaintiff to give notice.
9	**Ostraka vs Orange County Classical Academy** **2022-01278539**	**Motion to Compel Deposition (Oral or Written)** **Plaintiff Ostraka's Motion to Compel non-party Gary Davis' Compliance with Deposition Subpoena is DENIED.** *Code of Civil Procedure* section 2025.280(b) provides that the production by a deponent nonparty "requires the service on the deponent of a deposition subpoena under Chapter 6 (commencing with Section 2020.010)." Pursuant to *Code of Civil Procedure* section 2020.010, "the process by which a nonparty is required to provide discovery is a deposition subpoena." *Code Civ. Proc*. § 2020.010(b). Personal service of any deposition subpoena is effective to require a deponent to provide "[a]ny specified production, inspection, testing, and sampling." *Code Civ. Proc.* § 2020.220(c)(2). Here, prospective deponent Davis asserts he was not personally served with the subpoena. Rather, his 22-year old daughter was served when he was not at home. Both Mr. Davis and his daughter Grace Davis submit declarations attesting to this fact. (ROA 135 and ROA 137) It appears there was no agreement between Mr. Davis and Plaintiff prior to service of the deposition subpoena agreeing to substituted service.

		Plaintiff contends Mr. Davis waived his right to object to the subpoena based on faulty service because he failed to timely object to the deposition subpoena and never filed a motion to quash. But proper service is a jurisdictional issue. "California cases have consistently enforced the requirement of strict statutory compliance for all types of constructive and substituted service, even where authorized by statute. Compliance with the statutory conditions for a constructive service is jurisdictional. No person is compelled to act in a judicial proceeding in which jurisdiction over her person has not been obtained. Mere knowledge of the action is not a substitute for service, nor does it raise any estoppel to contest the validity of service." *In re Abrams* (1980) 108 Cal.App.3d 685, 692-693. Because the deposition subpoena was not personally served on Mr. Davis, the motion is DENIED. Both parties request for sanctions are DENIED. Plaintiff to give notice. The Court encourages Plaintiff and counsel for Mr. Davis to arrange for service of the subpoena, and to meet and confer regarding the location and date of the deposition.
10	**Roebuck vs Ford Motor Company** **2021-01181534**	**Motion to Compel Verifications for Discovery Responses** **Defendant's Motion to Compel Verifications by Plaintiff to Responses to Form Interrogatories, set one; Special Interrogatories, set one; Requests for Admission, set one; Request for Production, set one; Special Interrogatories, set two; Requests for Admission, set two; and Requests for Production, set two is GRANTED. Plaintiff is ordered to serve signed verifications within 15 days.** Plaintiff is required to serve verifications to his written discovery responses. Responses to discovery must be verified. *Code of Civil Procedure*, §§ 2030.250(a); 2033.240(a); and 2031.250(a).

		Plaintiff has not served verifications to any of the above referenced seven sets of written discovery responses. It is axiomatic that responses must be signed by the party to whom the written discovery is directed. If responses contain objections, then verification needs to come from both responding party and counsel. If responses consist solely of objections, only counsel need sign. While it is acknowledged that if no verification of responses is provided, it is tantamount to no response at all. *Appleton v. Superior Court* (1988) 206 Cal. App. 3d 632, 636. Generally, the lack of responding party verification results in a motion to compel responses. However, the court is not aware of any preclusion of the propounding party seeking a remedy, as is the case here, to compel responding party plaintiff to provide verifications. Thus, Defendant's Motion to Compel verifications is granted. <u>Sanctions</u> This motion is unopposed by plaintiff or his counsel and has been on file since October 2023. Plaintiff's request for sanctions is GRANTED in the amount of $3,879.50 against Plaintiff and his counsel of record the Law Offices of Jim O. Whitworth, jointly and severally, payable within 30 days of this order. *Code Civ. Proc.*, §§ 2030.290(c); 2031.300(c); 2033.280(c); *California Rules of Court*, Rule 3.1348(a). Defendant to give notice.
11	**H. vs Big Brothers Big Sisters of Orange County and the Inland**	**Motion to Compel Further Responses to Form Interrogatories** **Motion to Compel Further Responses to Special Interrogatories**

	Empire, Inc. **2022-01298805**	These two discovery motions are off calendar pursuant to telephone call of 05/08/2024.
12	**Platinum Properties Investor Network, Inc. vs Fuller** **2018-00974280**	**Motion to Strike or Tax Costs** **Motion to Tax Costs** **Motion to Tax Costs** These three Motions to Tax Costs are continued to 09/09/2024 pending selection of a referee to handle all Motions to Tax.
13	**Tsirtsis vs Pacific Hospital Long Beach** **2021-01234325**	**Motion for Summary Judgment and/or Adjudication** **Defendants Michael D. Drobot, Sr., and HealthSmart Pacific Inc. f/d/b/a Pacific Hospital of Long Beach's unopposed Motion for Summary Judgment, or in the alternative, Summary Adjudication is GRANTED.** Where a motion for summary judgment is unopposed, the moving party may still not be granted summary judgment unless the papers clearly establish there is no triable issue of fact and the moving party is entitled to judgment. *Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 613. The First Amended Complaint alleges three causes of action against Moving Defendants: 1) Recovery of Stolen Property Under *Penal Code* § 496; 2) Medical Battery; 3) *Business and Professions Code* § 17200. The FAC also purports to segregate the defendants in two separate categories, namely the Doctor Defendants and Entity Defendants, defined as all non-individual defendants listed in the caption. (See FAC ¶ 3.) The complaint also defines "Drobot Associates" as

		Doctor Defendants, on the one hand and/or the Entity Defendants. (FAC at ¶ 6.) <u>First Cause of Action - Recovery of Stolen Property under *Penal Code* § 496</u> "The elements of a violation of Penal Code section 496, subdivision (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 (iii) the defendant received or had possession of the stolen property." *Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126. The FAC alleges, upon information and belief, that Drobot Associates (i.e., Michael Drobot, HealthSmart, and the doctors) concealed and withheld or are concealing and withholding, Plaintiff's property in the form of money each of the Drobot Associates derived from their participation in the Criminal Enterprise and flowing from the allegations and convictions in the Criminal Cases wherein Plaintiff was a victim of such endeavors. (FAC at ¶ 11.) It is alleged each of the Drobot Associates aided each and every other Drobot Associate in the receipt of money from the Criminal Enterprise which was a substantial factor in causing injury to Plaintiff. Moreover, the Drobot Associates conduct as described in this cause of action has forced Plaintiff to retain legal counsel and incur legal fees and costs to prosecute this action to remedy the Drobot Associates conduct. (FAC ¶ 12.) On January 29, 2024, the Court granted Moving Defendants' motion to deem requests for admissions against Plaintiff admitted. (ROA 139.) "[I]n discovery when a party propounds requests for admission, any facts admitted by the responding party constitute judicial admissions." *Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 452. Through these deemed admissions, Plaintiff admitted Drobot, the Entity Defendants, and the Doctor Defendants have not obtained any property from him. (RFA Nos. 8-10.) Plaintiff has admitted Drobot has not concealed or withheld any property from Plaintiff, and that Drobot did not violate *Penal Code* § 496. (RFA Nos. 11,

		12.) Plaintiff also admits he has not suffered any damages as a result of the conduct of Drobot. (RFA No. 12.) All of the foregoing facts are undisputed. Accordingly, the motion is GRANTED to the first cause of action. Second Cause of Action – Medical Battery "A battery is any intentional, unlawful and harmful contact by one person with the person of another. The contact is unlawful for purposes of battery if it was not consented to. Thus, where a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not obtained, there is a clear case of battery." *Daley v. Regents of the University of California* (2019) 39 Cal.App.5th 595, 602. The FAC alleges Plaintiff underwent numerous spinal surgeries which were not medically necessary. Defendants knew the surgeries were not medically necessary and obtained Plaintiff's consent through false pretenses and deceit. The numerous spinal surgeries were performed by one or more of the Drobot Associates. If Plaintiff had known the spinal surgeries were not medically necessary, he would not have consented to them. Again, through the deemed admissions, Plaintiff admits the surgeries were necessary, and Drobot did not make any representations to him that the surgeries performed on him were necessary. (RFA No. 13, 16.) Plaintiff also admits he has not suffered any damages as a result of the conduct of Drobot. (RFA No. 19.) He also admitted the surgeries were not performed at Pacific Hospital. (RFA No. 18.) All of the foregoing facts are undisputed. Accordingly, the motion is GRANTED to the second cause of action. Third Cause of Action – *Business & Prof.* Code § 17200 According to the FAC, Moving Defendants are being sued for violation of *Business & Professions Code* § 17200 based on violation of *Penal Code* § 496 and medical battery.

		Section 17200 prohibits "unfair competition" which means "any unlawful, unfair or fraudulent business act or practice". *Bus. & Prof. Code* §17200, et seq. ("UCL"). "A claim made under section 17200 is not confined to anticompetitive business practices, but is also directed toward the public's right to protection from fraud, deceit, and unlawful conduct. Thus, California courts have consistently interpreted the language of section 17200 broadly. [S]ection 17200 definition is disjunctive, the statute is violated where a defendant's act or practice is unlawful, unfair, fraudulent or in violation of section 17200." *Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1007. As stated above, Plaintiff admits Moving Defendants did not engage in unlawful conduct because they did not violate *Penal Code* § 496 or commit medical battery. Therefore, no triable issue of material fact exists as to the claim for unlawful business practice. Accordingly, the motion is GRANTED as to the third cause of action. Because the motion disposes of all the claims brought by Plaintiff against Moving Defendants, summary judgment is appropriate. *Code of Civil Procedure* section 437c, subd. (c); *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946, 954. Moving Defendants are to prepare, file and serve a Proposed Judgment consistent with this ruling. The Court sets an Order to Show Cause hearing re Submission of the Proposed Judgment for July 1, 2024, at 8:30 AM in Department C15. If the proposed judgment is submitted prior to that date, the Order to Show Cause will go off calendar. Moving party to give notice.
14	**Lally vs Broderick** **2022-01262645**	**Motion for Summary Judgment and/or Adjudication** **Plaintiff Shanna Lally's motion for summary judgment in favor of Plaintiff and against defendant Karen Broderick as to Plaintiff's sole cause of action for partition and for an interlocutory judgment for partition by sale of the real property commonly known as 6782 Canterbury Drive, Huntington Beach,**

		California 92647 is GRANTED. Plaintiff's motion for summary adjudication is MOOT. Plaintiff's Request for Judicial Notice is GRANTED. Defendant's Request for Judicial Notice is GRANTED as to Exhibit 1 and DENIED as to Exhibit 2 as unnecessary to the disposition of the Motion. Defendant's Evidentiary Objections to Plaintiff's Evidence is OVERRULED. Plaintiff's Evidentiary Objections to the Declaration of Karen Broderick is OVERRULED. The Court declines to rule on Plaintiff's Evidentiary Objections to the Declaration of Freddie Vega on the grounds that they are immaterial to the disposition of this Motion. "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." *Code of Civil Procedure* § 437c, subd. (a)(1).) "A plaintiff . . . has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff . . . has met that burden, the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." *Code Civ. Proc*. § 437c, subd. (p)(1). The Complaint alleges a single cause of action for Partition of Real Property. "A partition action may be commenced and maintained by . . . An owner of an estate of inheritance, an estate for life, or an estate for years in real property where such property or estate therein is owned

		by several persons concurrently or in successive estates.” *Code Civ. Proc*. § 872.210, subd. (a)(2). “““[P]artition” is “the procedure for segregating and terminating common interests in the same parcel of property.”’ [Citation.] It is a ‘““remedy much favored by the law. The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property.’””” *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 142. “At the trial, the court shall determine whether the plaintiff has the right to partition.” *Code Civ. Proc.,* § 872.710, subd. (a). “If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition.” *Code Civ. Proc.,* § 872.720, subd. (a). “The court shall order that the property be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment.” *Code Civ. Proc.,* § 872.810. However, “[i]n lieu of dividing the property among the parties, the court shall order the property be sold and the proceeds divided among the parties in accordance with their interests in the property if the parties agree to such relief or the court determines sale and division of the proceeds would be more equitable than a division of the property.” *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493 (*LEG Investments*). “Every partition action includes a final accounting according to the principles of equity for both charges and credits upon each cotenant’s interest. Credits include expenditures in excess of the cotenant's fractional share for necessary repairs, improvements that enhance the value of the property, taxes, payments of principal and interest on mortgages, and other liens, insurance for the common benefit, and protection and preservation of title. *Wallace v. Daley* (1990) 220 Cal.App.3d 1028, 1035–1036. “[P]artition, which is frequently denominated an absolute right [citation], is subject to waiver, and also to estoppel and similar equitable defenses.” *Thomas v. Witte* (1963) 214 Cal.App.2d 322, 327. The right of partition may be waived by contract, either express or implied contract. *LEG Investments*, *supra*, at 493.

		Plaintiff seeks partition of real property commonly known as 6782 Canterbury Drive, Huntington Beach, California 92647 (the "Property"). (Plaintiff's Undisputed Material Fact ("UMF") No. 1.) Plaintiff has submitted undisputed evidence to show the Property is a single-family home. (UMF No. 2.) The interests in the fee title to the Property are vested in: Shanna M. Lally, as to an undivided 50% interest, and Karen L. Broderick, as to an undivided 50% interest. (UMF No. 3.) The owners of the Property, Plaintiff and Defendant, do not have any agreement between them that waives their respective right to Partition. (UMF No. 5.) The only material fact disputed by Defendant is that Plaintiff has the right to partition of the Property by sale. (UMF No. 4.) Defendant makes two arguments in support. First, Defendant argues there are triable issues of material fact as to whether Plaintiff has unclean hands. Second, Defendant argues there is a triable issue of material fact as to whether Plaintiff will be unjustly enriched based on Defendant's claim for Conversion as alleged in Defendant's First Amended Cross-Complaint ("FACC"). <u>Unclean Hands</u>: "The doctrine of unclean hands prevents a party from obtaining either legal or equitable relief when that party has acted inequitably or with bad faith relative to the matter for which relief is sought." *People v. Wickham* (2013) 222 Cal.App.4th 232, 238. "[I]t is an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his [or her] claim." *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 985. However, "it is not every wrongful act nor even every fraud which prevents a suitor in equity from obtaining relief. The misconduct which brings the clean hands doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants. Accordingly, relief is not denied because the plaintiff may have acted improperly in the past or because such prior misconduct may indirectly affect the problem before the court." *Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 728–729 (*Fibreboard Paper*). Although not a partition case, *Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102 (*Aguayo*) is instructive as to conduct which is

		sufficient to invoke the doctrine of unclean hands. In *Aguayo*, the plaintiff sought to quiet title to real property based on her claim of adverse possession. *Id.* at 1105. The appellate court affirmed the trial court's finding that the unclean hands doctrine barred the plaintiff from asserting adverse possession because she and her husband had fraudulently recorded a quitclaim deed transferring the property to themselves and directed that tax statements be mailed to them so they could pay the taxes on the property in order to satisfy the requirement of adverse possession. *Id.* at 1113–1114. The plaintiff's deceitful conduct related directly to one of the required elements for her claim of adverse possession to the property at issue. The appellate court found that "[t]his is the kind of bad faith, unconscionable conduct that a trial court, sitting as a court of equity, can reasonably conclude is sufficient to invoke the doctrine of unclean hands." *Ibid.* Here, Defendant argues Plaintiff has unclean hands because Defendant allegedly took funds from a joint account held by Broderick and Plaintiff's late father. Defendant has submitted a declaration in support of her Opposition in which she states: "On or around February 22, 2022, Ms. Lally knowingly and intentionally abused her authority as Trustee over her father's Trust out of pure greed by wrongfully and improperly withdrawing the principal sum of $215,319.00 from the joint bank account that I maintained with Patrick just six days prior to his death." (Broderick Decl., ¶ 31; see also ¶¶ 32-34, 41-43.) However, this evidence is insufficient to raise a triable issue of material fact of Plaintiff's unclean hands since the alleged wrongful conduct is not related to the subject matter of the partition complaint and does not affect the equitable relations between Plaintiff and Defendant as to the Property. Therefore, Defendant has not sufficiently raised a triable issue of material fact on her unclean hands defense so as to bar summary adjudication on Plaintiff's claim for partition by sale. Unjust enrichment: Defendant argues there is a triable issue of material fact as to whether Plaintiff will be unjustly enriched based on Defendant's claim for Conversion as alleged in Defendant's FACC. The Conversion claim is based on Defendant's allegations Plaintiff

		improperly withdrew funds from the joint account held by Defendant and Plaintiff's late father. (Defendant's RJN, Ex. 1, ¶¶ 55-58.) Plaintiff's Motion seeks summary judgment and/or adjudication of the partition claim in the Complaint. The Motion does not involve the FACC which is considered "a separate pleading and represents a separate cause of action from that which is stated in the complaint." *Security Pacific National Bank v. Adamo* (1983) 142 Cal.App.3d 492, 496. "Where there are both a complaint and a cross-complaint there are actually two separate actions pending and the issues joined on the cross-complaint are completely severable from the issues under the original complaint and answer. *Ibid.* Plaintiff's Complaint and Defendant's FACC are considered separate actions and any issues of material fact that exist as to Defendant's FACC are insufficient to defeat summary adjudication on Plaintiff's claim for partition as alleged in the Complaint. Further, here, Defendant's answer does not assert any affirmative defense of unjust enrichment. (Reply, p. 3, lns. 12-13, fn. 1.) Therefore, Defendant has not sufficiently raised a triable issue of material fact on her unjust enrichment defense so as to bar summary adjudication on Plaintiff's claim for partition by sale. Based on the foregoing, the Motion for Summary Judgment if GRANTED. Defendant to give notice.