Tentative Rulings for September 1, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG05608 — ***Calburton, Inc. v. Rojas*** **is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 403.**

26CU00122 — ***Morgan v. Willow Creek Post Acute, LLC*** **is continued to Tuesday October 6, 2026, at 3:30 p.m. in Department 403.**

26CU01460 — ***In the Matter of the Petition of: Robert Timothy Van Tassel*** **is continued to Tuesday, September 15, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(35)

Tentative Ruling

Re: ***In re Jacob Cox***
Superior Court Case No. 25CECG01228

Hearing Date: September 1, 2026 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

Petitioner Jessica Cox and counsel of record are directed to personally appear. Claimant Jacob Cox is excused from appearing.

Explanation:

Petitioner Jessica Cox ("Petitioner") seeks review of a proposed compromise of a claim by claimant Jacob Cox ("Claimant") for a third time. Previously, the court identified certain issues with medical expenses, and a claim by Petitioner against Claimant's compromise for lost wages. In what the court can only conclude is a bold adjustment, Petitioner's claim for lost wages in the amount of $3,240.00 has disappeared, and the total settlement has been reduced from its prior reported $30,336.15, to $25,966.23. No attempt to explain the reduction was included.

Neither has there been any attempt to explain why the previously reported $30,336.15 reflects the value of the claim, policy limits, or any combination of reasons. Counsel has submitted that policy limits in this action are $30,000.00. No indication was made that the insured was contributing previously, and no indication is given now as to why $25,966.23, which is under policy limits is appropriate.

In light of the history of the claims against Claimant's compromise, and of the unexplained reduction of the compromise amount, Petitioner and counsel of record are directed to personally appear and give explanation as to the reduction in Claimant's compromise.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: <u>SMC</u> on <u>August 31, 2026</u>.
(Judge's initials) (Date)

(35)

<u>Tentative Ruling</u>

Re: ***Brown v. The Arc Fresno/Madera Counties***
Superior Court Case No. 26CECG00287/COMPLEX

Hearing Date: September 1, 2026 (Dept. 403)

Motion: Motion to Compel Arbitration

Tentative Ruling:

To continue to Wednesday, September 9, 2026, 3:30 p.m. in Department 403.

Explanation:

On May 28, 2026, the parties filed a stipulation for order which was entered as an order by the court on June 15, 2026. The order acknowledged the parties' intent to pursue private arbitration and granted leave for plaintiff Mark Anthony Brown ("Plaintiff") to file a proposed First Amended Representative Action Complaint. Upon the filing of the amended pleading, and the filing of an answer thereto, all dates on calendar would be vacated, and the matter would be stayed.

Plaintiff has now filed an amended pleading. However, defendant The Arc Fresno/Madera Counties has yet to file an answer. Accordingly, these dates remain on calendar, and the action is not yet stayed. (June 15, 2026, Order, Item 6.) The matter is once again continued.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: <u>SMC</u> on <u>August 31, 2026</u>.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Eastern Funding LLC v. Just Trans, Inc., et al.***
Superior Court Case No. 25CECG02867

Hearing Date: September 1, 2026 (Dept. 403)

Motion: by Plaintiff to Set Aside Dismissal of Action

Tentative Ruling:

To grant. The dismissal entered on May 7, 2026, is set aside on grounds of "mistake, inadvertence, surprise or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) A Case Management Conference hearing is set for Tuesday, December 1, 2026, at 3:30 p.m. in Department 403.

Explanation:

Attorney Affidavit of Fault:

The court is empowered to relieve a party "upon any terms as may be just … from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc. § 473, subd. (b).) Where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary. A limitation on the mandatory relief is that the court may deny relief if it finds the default or dismissal "was *not* in fact caused by the attorney's mistake, inadvertence, surprise or neglect" (e.g. where the attorney is attempting to "cover up" for the client). (*Id.*)

Moreover, the law favors judgments on the merits. Where dismissals are the procedural equivalent on a default; i.e., those which deprive plaintiffs of their day in court, relief is favored. (*Leader v. Health Indus. Of America, Inc.* (2001) 89 Cal.App.4th 603, 618.)

Here, counsel submits that the dismissal of the action was caused by his firm. The court dismissed the action because plaintiff (or plaintiff's counsel) failed to appear at the order to show cause ("OSC") hearing on May 7, 2026. Mr. Alper indicates that he failed to appear at the OSC, because his legal assistant forgot to set up a remote appearance with the court for the hearing. (Alper Decl., ¶¶ 5, 7-8; Santamaria Decl., ¶¶ 5-6.) Upon realizing her mistake, Ms. Santamaria immediately made multiple attempts to contact the clerk of the court and CourtCall in order to arrange a telephonic or remote appearance, but was unsuccessful. (Santamaria Decl., ¶ 6.) Therefore, it is clear that plaintiff's counsel's firm's inadvertence caused the dismissal of the action and the court intends to grant the motion.

Procedural Requirements:

The application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. §473, subd. (b).) But this requirement is not jurisdictional, and substantial compliance may suffice. (*Carmel, Ltd. V. Tavoussi* (2009) 175 CA4th 393, 403 [substantial compliance found where counsel offered proposed answer at motion hearing rather than serving it with moving papers.]; *Austin v. Los Angeles Unified School Dist.* (2016) 244 CA4th 918, 933 [plaintiff substantially complied with the "attached-pleading requirement" by offering facts and legal arguments in her motion.].)

Given that, ordinarily, there is not a pleading to be filed by plaintiff at this stage of the proceedings; plaintiff is excused from this requirement. Nonetheless, the court appreciates plaintiff's attempt to comply with this requirement by attaching copies of the default packages against defendants. However, plaintiff will need to resubmit its default packages separately, if it seeks default judgment against defendants.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC on August 31, 2026 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re:	***Martinez v. Gonzalez*** Superior Court Case No. 25CECG00489
Hearing Date:	September 1, 2026 (Dept. 403)
Motion:	by Plaintiff for Relief from Dismissal

Tentative Ruling:

To deny the motion as premature.

A hearing on the court's own motion for reconsideration of the Case Management Conference Minutes/Order to Show Cause, filed on October 22, 2025, is set for Wednesday, October 7, 2026, at 3:30 p.m. in Department 403, since the October 22, 2025 order is unsigned and the court did not properly serve the May 30, 2025 order continuing the case management conference to plaintiff's counsel at their address of record. (Code Civ. Proc., § 1008; *Le Francois v. Goel* (2005) 35 Cal.4th 1094; *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573.) Any opposition must be filed and served on all appearing parties at least nine court days prior the hearing, and any reply papers at least five court days before the hearing.

Explanation:

Statutory Relief

Code of Civil Procedure section 473, subdivision (b), provides in pertinent part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief ... shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (*Ibid*.)

The six-month time period for filing a motion under Code of Civil Procedure section 473, subdivision (b), is jurisdictional, and the court is without power to grant relief after expiration of the period. (*Solot v. Linch* (1956) 46 Cal.2d 99, 105–106; *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42 [finding trial court was without jurisdiction to grant motion to vacate, holding that "[t]he six-month time limit for granting statutory relief is jurisdictional and the court may not consider a motion for relief made after that period has elapsed"]; *Stevenson v. Turner* (1979) 94 Cal.App.3d 315, 318["[t]he six-month outside time limit for granting relief is jurisdictional and the court may not consider any motion made after that period has elapsed"]; *Northridge Financial Corp. v. Hamblin* (1975) 48 Cal.App.3d 819, 826 [affirming denial of motion to vacate under "jurisdictional time period of section 473"]; *Thompson v. Vallembois* (1963) 216 Cal.App.2d 21, 24 [section 473 motion made more than six months after entry of default "was made too late, and the trial court simply lacked jurisdiction to act under it"].)

"[T]he six-month limitations periods of the mandatory and the discretionary relief provisions of section 473(b) mean the longer of six calendar months or 182 days." (*Jimenez v. Chavez* (2023) 97 Cal.App.5th 50, 58.)

Here, this court entered the order dismissing plaintiff's action on October 22, 2025. (Stone Decl., ¶ 4.) The instant motion was filed on April 23, 2026. Without providing any calculation of time, plaintiff merely concludes that the motion is timely. The court takes judicial notice that April 23, 2026 was 183 days after October 22, 2025, computing the number of days in the time period by excluding the first day and including the last day, which was not a holiday. (Evid. Code, §§ 452, subd. (h), 459, subd. (a); Code Civ. Proc., §§ 12, 12a.) The court further judicially notices that April 23, 2026 was six months and one day after October 22, 2025. (Evid. Code, § 452, subd. (h); Code of Civil Procedure section 17(f) [" 'month' means a calendar month"].) Therefore, the motion is untimely under either calculation, and the court is without power to grant relief pursuant to Code of Civil Procedure, section 473, subdivision (b).

Equitable Relief

Nonetheless, the 6-month limit does not apply where relief is sought on equitable grounds, and a court may treat a motion under Code of Civil Procedure, section 473, subdivision (b) as a motion for equitable relief. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47.)

Where relief is sought more than six months after the entry of dismissal, the motion is directed to the court's inherent equitable power to set aside a judgment on the ground of extrinsic fraud or mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 576-578; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300; *Bae v. T.D. Service Co.* (2016) 245 Cal.App.4th 89, 97.) The terms "extrinsic fraud or mistake" are given a broad interpretation and cover almost any circumstance by which a party has been deprived of a fair hearing. There need be no actual fraud or mistake in the strict sense. (*Marriage of Park* (1980) 27 Cal.3d 337, 342; *Sporn v. Home Depot USA, Inc.*, *supra,* 126 Cal.App.4th at p. 1300 [requires evidence "that the papers were lost, stolen, forwarded to the wrong person or eaten by the dog"]; *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1233.) "The term 'extrinsic' refers to matters outside of the issues framed by the pleadings, or the issues adjudicated. [Citation.]" (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738.)

With regard to extrinsic mistake in particular, the term is broadly applied to cover situations in which circumstances extrinsic to the litigation have cost a party a hearing on the merits. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) These are usually cases of excusable neglect by defendant or defendant's attorney in failing to appear and present a defense: "If such neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief is present, and is often called 'extrinsic mistake.'" (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471; *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47.) Relief will be denied, however, if the complaining party's negligence permitted the mistake to occur. (*Kulchar v. Kulchar, supra*, 1 Cal.3d at p. 473; *Manson, Iver & York v. Black*, *supra,* 176 Cal.App.4th at p. 47; see also Wilson v. Wilson (1942) 55 Cal.App.2d 421.)

The party seeking relief must show: "(1) a satisfactory excuse for not having discovered the facts prior to the entry of the judgment; and (2) diligence in seeking relief after discovery of the facts." (*Page v. Insurance Co. of North America* (1969) 3 Cal.App.3d 121, 129.)

In the present case, counsel, Keith Stone's two declarations indicate the failure to appear at the case management conference on October 22, 2025, was due to several factors as follows: (1) the court's order continuing the case management conference from June 12, 2025 to October 22, 2025 was inadvertently served to an incorrect address that was not counsel's address of record in this case (Stone Supp. Decl., ¶¶ 4-5 and Ex. A thereto); (2) the attorney primarily responsible for handling this matter, who is no longer employed by the firm, failed to properly calendar the October 22, 2025 case management conference in the firm's electronic case management software. (Stone Decl., ¶ 5.)

While plaintiff has shown a satisfactory excuse for not attending the October 22, 2025 case management conference, the motion lacks evidence to address whether plaintiff diligently sought relief after discovery of the facts. Mr. Stone's declaration admits that the October 22, 2025 order entering dismissal was served on his firm on October 23, 2025 (Stone Decl., ¶ 4), and yet, the instant motion for relief was not filed until April 23, 2025, six months following service of the order. Accordingly, without more, the court cannot grant the motion on the basis of the court's inherent equitable power.

Reconsideration

In *Le Francois v. Goel* (2005) 35 Cal.4th 1094, the California Supreme Court held that a trial court has inherent authority to reconsider "its prior interim rulings on its own motion." (*Id*., at p. 1105.) "[T]he trial court retains the inherent authority to change its decision at any time prior to the entry of judgment." (*Id*., at p. 1100.) The court has inherent power to correct its own errors when they are called to the court's attention by way of an improperly filed motion or by arguments on a related motion. (*Boschetti v. Pacific Bay Investments Inc.* (2019) 32 Cal.App.5th 1059, 1070 [the 10-day time frame in Code of Civil Procedure, section 1008 does not limit the court's ability to reconsider.].) "[I]n order to grant reconsideration on its own motion, the trial court must conclude that its earlier ruling was wrong, and change that ruling based on the evidence originally submitted." (*In re Marriage of Ankola* (2020) 53 Cal.App.5th 369, 383.)

"A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered. [¶] *All dismissals ordered by the court shall be in the form of a written order signed by the court* and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case." (Code Civ. Proc., § 581d, emphasis added.) In other words, an order of dismissal is a judgment, and therefore, a motion for reconsideration does not lie after a dismissal. (*APRI Ins. Co. v. Sup.Ct. (Schatteman)* (1999) 76 Cal.App.4th 176, 181.)

However, "[a]n order that is not signed by the trial court does not qualify as a judgment of dismissal under [Code of Civil Procedure] section 581d." (*Powell v. County* *of Orange* (2011) 197 Cal.App.4th 1573, 1578; see also *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 229 ["[t]he order granting the anti-SLAPP motion did not qualify as a dismissal, as it was an unsigned minute order".)

The court takes judicial notice of its own docket and notes that the court's minute order dismissing the complaint for plaintiff's failure to appear for the case management conference on October 22, 2025, is not signed. (See the CMC Minutes/OSC, filed on Oct. 22, 2025.) A signed order made pursuant to Code of Civil Procedure section 581d does not otherwise appear in the court's docket or records.

The lack of a written order of dismissal signed by the court has two consequences. First, the motion for relief from dismissal is premature as there is no judgment yet to set aside. Second, in this matter, there is no final judgment so as to preclude the court from reconsidering its own orders, which is discussed below.

Here, the court set a case management conference for June 12, 2025. On May 30, 2025, the court issued a minute order continuing the case management conference from June 12, 2025 to October 22, 2025. (See the Minute Order re: Continuance of Case Management Conference from Chambers, filed on May 30, 2025 ("May 30, 2025 Minute Order").) Plaintiff failed to appear for the October 22, 2025 case management conference, and the court dismissed the action without prejudice for plaintiff's failure to appear. (See the Case Management Conference Minutes/Order to Show Cause, filed on October 22, 2025.)

As indicated above, plaintiff's counsel's supplemental declaration submits that the court's order continuing the case management conference from June 12, 2025 to October 22, 2025 was inadvertently served to an incorrect address that was not counsel's address of record in this case. (Stone Supp. Decl., ¶¶ 4-5 and Ex. A thereto.)

"In case of service by mail, the notice or other paper shall be . . . addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence." (Code Civ. Proc., § 1013, subd. (a).)

The clerk's certificate of mailing accompanying the May 30, 2025 Minute Order re: Continuance of Case Management Conference from Chambers that continued the case management conference set on June 12, 2025 to October 22, 2025, indicates that the order was mailed to <u>1150 S. Robertson Blvd., Los Angeles, CA 90035.</u> (Stone Supp. Decl., at Ex. A.) The court judicially notices the fact that the only documents filed by plaintiff in this case prior to the May 30, 2025 order were the Civil Case Cover Sheet, Complaint, and Summons. Counsel's address listed on all three documents were as follows: <u>1122 S. La Cienega Blvd., Los Angeles, CA 90035.</u> Thus, the court's service of the May 30, 2025 Minute Order informing the parties of the continuance was defective, and undoubtedly, a substantial factor in plaintiff's non-appearance at the October 22, 2025 hearing. Accordingly, the court intends to set a hearing to reconsider the entry of the Case Management Conference Minutes/Order to Show Cause, filed on October 22, 2025 ("October 22, 2025 Order").

Therefore, the motion for relief is denied as premature. The court, on its own motion, sets hearing for reconsideration of the October 22, 2025 Order. (*Le Francois v. Goel* (2005) Cal.4th 1094, 1097, 1108 [prior to reconsidering its own orders, "the court must notify the parties that it may do so, solicit briefing and conduct a hearing"].)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: __________SMC__________ on _____August 31, 2026__________.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Romo v. Croskrey***
Superior Court Case No. 25CECG03158

Hearing Date: September 1, 2026 (Dept. 403)

Motion: Cross-Defendant Tony Romo's Demurrer and Motion to Strike as to the First Amended Cross-Complaint

Tentative Ruling:

To overrule the demurrer, with cross-defendant Tony Romo granted 10 days' leave to file his answer to the First Amended Cross-Complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

To deny the motion to strike.

Explanation:

Demurrer

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether a plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of a plaintiff's possible difficulty or inability in proving the allegations of the complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

Timeliness

A cross-complaint must be filed "before or at the same time" as an answer, otherwise leave of the court must be sought. (Code Civ. Proc., § 428.50.) Romo asserts that the answer and the accompanying initial cross-complaint were untimely filed on September 17, 2025 following a Notice of Acknowledgment and Receipt signed August 11, 2025 by defense counsel. The court would note that the code section requires leave only where the cross-complaint is not filed concurrently with the answer. That the answer was filed after the time in which it should have been has no bearing, particularly where no entry of default had been sought. Thus, the cross-complaint was filed appropriately.

Breach of Contract

To plead a breach of contract, a complaint must allege 1) an agreement, 2) performance by the plaintiff or excuse for nonperformance, 3) defendant's breach, and

4) damages. (*Wall Street Network, Ltd. v. New York Times Co*. (2008) 164 Cal.App.4th 1171, 1178; *Abdelhamid v. Fire Ins. Exchange* (2010) 182 Cal.App.4th 990, 999.) Here, the First Amended Cross-Complaint ("FACC") alleges an oral agreement wherein Romo was authorized to use a credit card for business purposes and would be required to show receipts for these expenses. (FACC, ¶ 9.) It is also alleged that Romo would receive cash advances, interest free, with the understanding that these would need to be repaid if they were not for business expenses. (FACC, ¶ 10.) The FACC sufficiently alleges the terms of both agreements. The FACC also alleges that Croskrey performed his obligations by providing the credit card and the advances. (FACC, ¶ 11.) The FACC alleges a breach by making unauthorized purchases on the credit card and failing to repay the advances or provide receipts to demonstrate business expenses. (FACC, ¶ 12.) The FACC alleges damages exceeding $6,000. (FACC, ¶ 13.)

Romo argues that the terms of the agreement are insufficient. A contract that is uncertain and indefinite is void. (*Cheema v. L.S. Trucking, Inc*. (2019) 39 Cal.App.5th 1142, 1149.) However, this does not mean that the terms must be set out in minute detail in order to be valid. (*Ibid*.) "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." (*Moncada v. West Coast Quartz Corp*. (2013) 221 Cal.App.4th 768, 777.) Here, the terms are sufficiently clear. Romo would have authority to use a credit card for business expenses and would have to provide receipts. (FACC, ¶ 9.) Croskrey would provide cash advances to Romo and Romo would pay these back, without interest, or show that funds were used for business expenses. (FACC, ¶ 10.) Both of these would be in the context of employment. (FACC, ¶¶ 9-10.)

Breach of contract is sufficiently alleged. The court overrules the demurrer as to this cause of action.

Conversion

To plead conversion, a complaint must allege 1) plaintiff's ownership or right to possession, 2) a wrongful act or disposition of property rights by defendant, and 3) damages. (*Greif v. Sanin* (2022) 74 Cal.App.5th 412, 449.) Conversion is a strict liability tort which does not rest on defendant's knowledge or intent. (*Ibid*.) Further, California law now holds that the property at issue can be intangible. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1151.) However, "money cannot be the subject of an action for conversion unless a specific sum capable of identification is involved." (*Ibid*, quoting *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681.) This does not mean that the money at issue must be "earmarked". (*Ibid*.)

As already stated, the plaintiff must show a right to possession or ownership which has been interfered with by the defendant. (*Ibid*.) "[S]imple failure to pay money owed does not constitute conversion." (*Ibid*, quoting *Kim v. Westmoore Partners, Inc*. (2011) 201 Cal.App.4th 267, 284.) Cases involving conversion of money "typically involve those who have misappropriated, commingled, or misapplied specific funds held for the benefit of others." (*Id*. at p. 1152, quoting *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 396.)

The court in *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 211 acknowledged that the plaintiff "had a property right in its credit card account because plaintiff's interest was specific, plaintiff had control over its credit card account, and plaintiff had an exclusive claim to the balance in the account." Where a defendant obtained monies from the credit card company, the "plaintiff became indebted to the credit card company." (*Ibid*.) Misappropriating the credit card meant that the balance was taken and was an unauthorized transfer. (*Ibid*.) While the unauthorized use in *Welco* involved a more overt action, use of a credit card on a credit card terminal, the court's reasoning is persuasive here. (*Id*. at p. 205.) Further, the court noted, "[c]redit card, debit card, or PayPal information may be the subject of a conversion." (*Id*. at p. 213.)

Damages are based on the detriment to the plaintiff. (*Greif v. Sanin*, *supra*, 74 Cal.App.5th at p. 449.) Where a showing is made of malice, fraud, or oppression, punitive damages may be recovered. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1151.) In "appropriate circumstances" so too are emotional distress damages. (*Ibid*.)

Romo cites to *Voris v. Lampert, supra,* 7 Cal.5th 1141 for the position that employment related debts cannot be asserted as a cause of action for conversion. There, the California Supreme Court was addressing whether the tort of conversion was cognizable with regard to an employee claim for unpaid wages. (*Id*. at p. 1144.) The Supreme Court determined it was not. (*Ibid*.) Here, while the underlying complaint alleges wage and hour claims, the cross-complaint does not. Nor does it involve an employee asserting such claims. Rather, the cross-complaint alleges an employee made unauthorized charges on a company credit card and took cash advances with the intent of not paying these back. (FACC, ¶ 15.)

The court overrules the demurrer as to this cause of action.

Penal Code Section 496

Penal Code section 496 articulates the unlawfulness of knowingly receiving stolen property. It also provides for treble damages and attorney's fees. (Pen. Code, § 496, subd. (c).) The elements are 1) property was stolen, 2) defendant's knowledge that the property was stolen, and 3) defendant's possession of the stolen property. (*Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 970.) Ultimately, "receiving, buying, or withholding property 'that has been obtained in any manner constituting theft'" comes under the purview of Penal Code section 496. (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1044.) It includes theft by false pretenses. (*Id*. at p. 1048.) Here, the FACC alleges Romo knowingly used the company credit card to make personal purchases and knowingly accepted cash advances with no intent to repay these. (FACC, ¶ 21.)

Employment Labor Disputes

Romo asserts that Penal Code section 496 is not available for employment labor disputes. The court in *Lacagnina v. Comprehend Systems, Inc.*, *supra*, 25 Cal.App.5th at pp. 968-969 did address that receipt of stolen property does not include labor, because labor is not property. This case might be relevant if Romo was making such claims in his own wage and hour complaint. Romo, however, is challenging his employer's cross-complaint, which has not alleged any theft related to labor. Thus, the court will not use it as a bar to Croskrey's claims here.

Statute of Limitations

A one-year statute of limitations is imposed for "statutes that provide for recovery of actual damages and a mandatory additional penalty." (*Prudential Home Mortgage Co. v. Superior Court* (1998) 66 Cal.App.4th 1236, 1242.) In the context of a civil claim asserting Penal Code section 496, a one-year statute of limitations would apply to a request for treble damages pursuant to subdivision (c). However, the remaining claims pursuant to Penal Code section 496 have a three-year statute of limitations.

The filing of a complaint tolls the statute of limitations for cross-complaints. (*Paredes v. Credit Consulting Services, Inc*. (2022) 82 Cal.App.5th 410, 431; ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd. (2016) 5 Cal.App.5th 69, 92.) Plaintiff's complaint was filed July 3, 2024. Thus, July 3, 2024 is the date used to determine whether the claims in the cross-complaint are made beyond the applicable statute of limitations.

The running of the statute of limitations must appear clearly and affirmatively on the face of the complaint. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) The statute of limitations accrues "when a party knows or should know the *facts* essential to his claim. (*Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1143, emphasis in original.) Here, it is not clear from the face of the complaint or the cross-complaint whether the statute of limitations had run. The cross-complaint alleges Romo was employed from "approximately July 2021 *through* July 2024". (FACC, ¶ 4, emphasis added.) It further alleges discovery of unauthorized charges on July 12, 2024. (FACC, ¶ 6.) The complaint alleges the employment relationship as "from July 2, 2021 through July 5, 2024." (Complaint, ¶ 23.) Further, the Reply concedes at least one charge in question would be within the statute of limitations. (Reply, p. 7.)

Particularity

Romo captions an argument "The FACC Fails to Allege Theft With Particularity." (Demurrer Memorandum, p. 9.) Romo presents no legal authority for the position that particularity is required for pleading Penal Code section 496 claims. Conclusions of fact or law are insufficient for pleading purposes. (*Daar v. Yellow Cab Co*. (1967) 67 Cal.2d 695, 713.) Counsel appears to confuse pleading conclusions with a standard of pleading with particularity. The court finds that the facts discussed above are sufficient for alleging a violation of Penal Code section 496.

Absurd Results

Civil Code section 3528 does prohibit absurd results. However, Romo cites to no authority for his position that treble damages and attorney's fees would accomplish absurd results in the context of allegations of unauthorized uses of a credit card.

The court overrules the demurrer as to the third cause of action.

Common Counts

A claim for money had and received is pled by alleging 1) indebtedness in a certain sum, 2) consideration, and 3) nonpayment. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) Thus, the cause of action is alleged where "the defendant is indebted to the plaintiff in a certain sum 'for money had and received by the defendant for the use of the plaintiff.'" (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 937, quoting *Schultz v. Harney* (1994) 27 Cal.App.4th 1611, 1623.) It is appropriately pled where a person receives money which belongs to another and "which in equity and good conscience should be paid over to the latter." (*Ibid*, quoting *Weiss v. Marcus* (1975 51 Cal.App.3d 590, 599.) Here, the FACC alleges that Romo received money belonging to Croskrey and that it should be paid to Croskrey. (FACC, ¶¶ 28-30.) The court overrules the demurrer to this cause of action.

<u>Strike</u>

A motion to strike may be used to address defects in pleadings otherwise not challengeable by a demurrer. (See Code Civ. Proc., § 435.) Code of Civil Procedure section 436 provides that a court may strike irrelevant, false, or improper matters, or parts of pleadings not filed in conformity with the rules of court. A motion to strike can be used to attack either a portion or the entirety of a pleading. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.)

Litigation Privilege

Civil Code section 47, subdivision (b) provides that statements made in legislative, judicial, other official proceedings, or in initiation or course of proceedings authorized by law are privileged publications. None of the claims made in the cross-complaint have anything to do with publications or communications made in connection with a judicial proceeding. Rather, the cross-complaint alleges wrongful taking of funds. The court will not strike the cross-complaint based on litigation privilege.

Penal Code Section 496

For the same reasons as those discussed in the Demurrer section above, the court declines striking Penal Code section 496, the request for treble damages, and the request for attorney's fees. Additionally, Romo presents an argument, without any legal authority, for striking the request for treble damages because Penal Code section 496, subdivision (c) uses the word "may" and the FACC uses the word "entitled". This argument lacks authority or merit.

Punitive Damages

Civil Code section 3294, subdivision (a) provides that plaintiffs may recover punitive damages where there is clear and convincing evidence the defendant has engaged in oppression, fraud, or malice. Here, plaintiff has prayed for punitive damages based on malice and fraud. Malice is conduct which is intended to cause injury 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, subd. (c)(1).) Fraud is intentional misrepresentation, deceit, or concealment of a material fact. (Civ. Code, §

3294, subd. (c)(3).) The FACC alleges that Romo knew he would be quitting after obtaining cash advances and that these were requested with no intent to repay them. (FACC, ¶ 7.) This is sufficient. The court will not strike the punitive damages.

Emotional Distress Damages

Emotional distress damages are an available remedy for a conversion claim. (*Gonzales v. Personal Storage, Inc*. (1997) 56 Cal.App.4th 464, 477.) The court has overruled the demurrer as to the cause of action for conversion. Thus, the court will not strike the request for emotional distress damages.

Labor Code Policies and Retaliation

Labor Code section 98.6 makes it unlawful to retaliate against an employee for bringing a wage dispute. However, Romo has not pointed to a portion of the Labor Code which prevents an employer from bringing claims against an employee regarding funds allegedly wrongfully taken by the employee. Additionally, Romo asserts, without citing to any authority, that the FACC must be stricken as retaliatory. The court will not strike the FACC based on either of these assertions.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC **on** August 31, 2026 .
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Neill v. Wallace***
Superior Court Case No. 25CECG04308

Hearing Date: September 1, 2026 (Dept. 403)

Motion: Motion for Summary Judgment

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC on August 31, 2026 .
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Pismo's of Fresno v. Villagio Shopping Center, LLC***
Superior Court Case No. 25CECG04448

Hearing Date: September 1, 2026 (Dept. 403)

Motion: Motion to Compel Further Responses

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC on August 31, 2026 .
(Judge's initials) (Date)