SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: March 21, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: **Before 4:00 PM today you must notify the:**

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	22CV396996	RESIDEO vs CRIME ALERT MONITORING CENTER, INC.	Parties are ordered to appear for the debtor examination.
2	23CV423685	Christopher Adams vs Ford Motor Company	Off calendar.
3	20CV368575	Kelly Kawashima vs County of Santa Clara	Off calendar per moving party's February 8, 2024 notice.
4	23CV418299	Rajeev Guliani vs Milind Dalal et al	Defendants' demurrers are SUSTAINED. Scroll to lines 4-5 for complete ruling. Court to prepare formal order.
5	23CV418299	Rajeev Guliani vs Milind Dalal et al	Defendants' demurrers are SUSTAINED. Scroll to lines 4-5 for complete ruling. Court to prepare formal order.
6	23CV425111	Demidchik Anna et. al vs Jun lin	Matter settled; motion off calendar.
7	23CV425111	Demidchik Anna et. al vs Jun lin	Matter settled; motion off calendar.
8	21CV385921	Sedi Sohrabi vs Mohmed Malek et al	Withdrawn by moving party.
9	21CV386439	Tom Rouse vs The Community of Eagle Ridge Owners Association	Community of Eagle Ridge and Owners Association's Motion for Attorney's Fees and Costs and to Amend Judgment is GRANTED. Scroll to line 9 for complete ruling. Court to prepare formal order.
10	23CV410646	Hsin-ti Liu et al vs FORD MOTOR COMPANY, a Delaware Corporation et al	Plaintiff's Motion for Attorney's Fees is GRANTED, IN PART. Scroll to line 10 for complete ruling. Court to prepare formal order.
11	23CV418057	Flavio Lariz vs Rebecca Anderson et al	Roe 1's Motion for Determination of Good Faith Settlement is GRANTED. A notice of motion with this hearing date was served by electronic mail on January 24, 2024. Plaintiff did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) The Court also finds that the settlement was reached in good faith and fulfills the factors set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488. Moving party to prepare formal order.
12	23CV422621	MICHAEL HERTZ vs MARK A. OLIVEREZ et al	Richard Gullen's motion to be relieved as counsel is GRANTED. Court to use form of order on file.

13	20CV368958	TIAO-MOU HSU et al vs BRENT LEE	Plaintiff's motion to compel Defendant's deposition is GRANTED. Plaintiff brought this motion by ex parte application on March 14, 2024, and the Court set it for hearing on this date, permitting an opposition to be filed by close of business on March 19, 2024 and emailed to the Court. The Court is unable to locate an opposition in the file. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) And, while it appears that it is Mr. Lee (as opposed to his counsel) that is causing the delay in this deposition, Plaintiff is entitled to this deposition, and Mr. Lee is therefore ordered to appear for deposition on or before April 15, 2024. The Court cautions Mr. Lee that failure to appear for deposition on or before that date may subject him to sanctions, including issue or other terminating sanctions. Court to prepare formal order.
14	20CV368954	CHUN-CHE CHEN vs BRENT LEE	Plaintiff's motion to compel Defendant's deposition is GRANTED. Plaintiff brought this motion by ex parte application on March 14, 2024, and the Court set it for hearing on this date, permitting an opposition to be filed by close of business on March 19, 2024 and emailed to the Court. The Court is unable to locate an opposition in the file. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) And, while it appears that it is Mr. Lee (as opposed to his counsel) that is causing the delay in this deposition, Plaintiff is entitled to this deposition, and Mr. Lee is therefore ordered to appear for deposition on or before April 15, 2024. The Court cautions Mr. Lee that failure to appear for deposition on or before that date may subject him to sanctions, including issue or other terminating sanctions. Court to prepare formal order.

Calendar Lines 4-5
Case Name: *Rajeev Guliani v. Casa Blanca Investments LLC., et.al.*
Case No.: 23CV418299

Before the Court are Defendants Milind P. Dalal's & Clarity Wealth Advisors, LLC's demurrer and Casa Blanca Investments, LLC's demurrers to Plaintiff's operative first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This dispute arises from an alleged breach of a loan agreement. According to the FAC, on September 18, 2015, Plaintiff entered an investment advisory agreement with Clarity Wealth Advisors, LLC ("Clarity") through its agent and owner Mr. Dalal. (FAC ¶ 20.) Pursuant to the agreement, Clarity agreed to provide investment advice to Plaintiff. (FAC ¶¶ 21-22.) At all times relevant, Defendant Dalal was also a member of Casa Blanca Investments, LLC ("Casa Blanca") and its agent. (FAC ¶ 41.)

In October 2018, Mr. Dalal advised Plaintiff to invest in Casa Blanca. (FAC ¶ 24.) Plaintiff made an initial investment of $200,000 in Casa Blanca through Clarity. Plaintiff's initial investment represented 20% of what Plaintiff invested with Clarity. (FAC ¶ 30.) Casa Blanca's Operating Agreement was executed on October 13, 2019. (FAC ¶ 27.) The initial funds invested in Casa Blanca by its members, including Plaintiff's $200,000 investment, were invested in real estate ventures owned by Dutchints Investments LLC. (FAC ¶ 34.)

In 2020, disputes arose among Casa Blanca, Dutchints, and other companies relating to Casa Blanca's investments involving various properties and 18771 Homestead Road LLC ("Homestead"). (FAC ¶¶ 36, 38.) On July 31, 2020, Casa Blanca entered a settlement agreement. Shortly prior to the agreement, Mr. Dalal asked Plaintiff to make a short-term loan to assist Casa Blanca in its negotiations and settlement. (FAC ¶ 40.) On July 15, 2020, Mr. Dalal texted Plaintiff that Casa Blanca needed to provide $1.5 million to Homestead. (FAC ¶ 54.) Eventually, Plaintiff, Mr. Dalal and Casa Blanca member Chris Meneze agreed to a short-term loan of $500,000.00, which Plaintiff was instructed to wire to Homestead. (FAC ¶¶ 55, 58, 60.)

On July 29, 2020, Plaintiff emailed Mr. Dalal inquiring about the status on repayment of his loan. Over the next two years, Plaintiff kept inquiring about repayment of his loan and Mr. Dalal, by extension Casa Blanca, continued making assurances that the debt would be paid with interest. (FAC ¶¶

71, 73, 82, 95.) On September 6, 2022, Sandeep Duggal sent Plaintiff an email denying the existence of the loan to Casa Blanca and claimed that Plaintiff independently participated in the development scheme funded by Plaintiff's loan to Homestead. (FAC ¶ 97.)

Plaintiff filed his initial Complaint on June 27, 2023. On November 27, 2023, Plaintiff filed his operative amended complaint alleging (1) breach of written contract, (2) breach of oral contract, (3) common counts – money lent, (4) common counts – money paid, expended, (5) breach of fiduciary duty, (6) negligence, (7) Promissory estoppel, and (8) unjust enrichment.

II. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) Courts may consider matters subject to judicial notice and evidentiary facts found in exhibits attached to a complaint on demurrer. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a

good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) It is the plaintiff's burden to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id*.)

III. Request for Judicial Notice

Defendant, Casa Blanca, asks the Court to take Judicial Notice of the Operating Agreement for Casa Blanca Investments, LLC. Defendant argues the Agreement is incorporated by reference by Plaintiff's FAC and was additionally put on record by Plaintiff on July 24, 2023, as Exhibit C to his "declaration in support of an ex-parte application for right to attach order and order for issuance of writ of attachment, or in the alternative, a temporary protective order pending noticed hearing on right to attach order and writ of attachment; and of irreparable harm if no such order is issued."

While Plaintiff acknowledges the Court's ability to take judicial notice of the existence of a document in its file, he objects to noticeability of the truth of the statements contained therein and to the extent Casa Blanca is requesting the Court to accept its interpretation of the terms in the Operating Agreement.

Defendant's request is GRANTED, IN PART. The Court takes notice of the existence of the Operating Agreement, but not the truth of any statements contained therein.

IV. Analysis

A. Milind Dalal & Clarity Wealth Advisors LLC's Demurrer

Plaintiff's claims against these Defendants are limited to general negligence and breach of fiduciary duty. Defendants assert the FAC fails to allege sufficient facts constituting these claims.

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) "'[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another or must enter into a relationship which imposes that undertaking as a matter of law." (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386.) A fiduciary duty can exist even in the absence of a relationship defined by law, if a plaintiff can show an agreement between the fiduciary and the principal where the fiduciary accepts fiduciary responsibilities. (*Wolf v. Superior Court* (2003) 107

Cal.App.4th 25, 29.) The existence of a fiduciary relationship undertaken by agreement, as opposed to a fiduciary relationship imposed by law, is a question of fact. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 447-448.)

To state a claim for negligence, a plaintiff must also sufficiently allege the existence of a duty. "It is an elementary principle that an indispensable factor to liability founded upon negligence is the existence of a duty of care owed by the alleged wrongdoer to the person injured..." (*Richards v. Stanley* (1954) 43 Cal.2d 60, 63.) The existence of this duty is a question of law for the court. (See e.g., *Ky. Fried Chicken of Cal. V. Superior Court* (1997) 14 Cal.4th 814, 819.)

Defendants argue Mr. Dalal, as an individual, did not owe Plaintiff a fiduciary duty or a duty of care because (1) Plaintiff entered an "investment advisory agreement" with Clarity, (2) Clarity is a limited liability company, of which Mr. Dalal is a member, (3) individual members of a limited liability company are not responsible for the Company's obligations or liabilities solely by reason of their action as members or managers for the Company, and (4) the FAC does not allege Mr. Dalal acted outside the scope of his membership and/or management.

Plaintiff asserts the FAC sufficiently pleads Mr. Dalal's and Clarity's negligence and breach of fiduciary duties because (1) the investment adviser/client relationship gives rise to a fiduciary duty as a matter of law, (2) Clarity, through Mr. Dala, entered into adviser/client relationship with Plaintiff, (3) Mr. Dalal had a duty to provide financial advice in the best interest of Plaintiff that was not self-serving, and (4) Mr. Dalal and Clarity breached their duties when they provided unsound investment advice for their own gain.

"A[n] [LLC] is a hybrid business entity formed under the Corporations Code and consisting of at least two "members" [citation] who own membership interests [citation]. The company has a legal existence separate from its members. Its form provides members with limited liability to the same extent enjoyed by corporate shareholders." (*PacLink Communications Internat., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 963.) "In general, members of a limited liability company are not liable for the 'debts, obligations, or other liabilities' of the limited liability company." (*CB Richard Ellis, Inc. v. Terra Nostra Consultants* (2014) 230 Cal.App.4th 405, 411 (citing Corp. Code § 17703.04(a)).) Corporations Code section 17703.04(b)-(c), (e) sets forth ways in which members can be held liable for the debts and

obligations of the limited liability company, including alter ego liability, a member's participation in tortious conduct, and a member explicitly agreeing to personal liability for particular obligations. (Corp. Code, § 17703.04(b)-(c), (e); *CB Richard Ellis, Inc., supra*, 230 Cal.App.4th at 411 (citing to Corporations Code § 17703.04(b)-(e) as identifying ways in which members can be held liable.)

Here, Plaintiff fails to sufficiently plead that Mr. Dalal, as an individual, owed a fiduciary duty and/or duty of care to Plaintiff. Plaintiff pleads Clarity was retained as his investment advisor since September of 2015 and repeatedly alleges Mr. Dalal (1) acted as Clarity's member and owner, (2) acted within scope of his work with Clarity, (3) is an agent/employee of Clarity, (4) acted in the scope of his employment agency with Clarity in harming Plaintiff, (5) was/is a member and agent of Casa Blanca, (6) used his influence as owner of Clarity and as a member/agent of Casa Blanca to persuade him to make a shot-term loan to Casa Blanca, and (7) engaged in tortious conduct in furtherance of his agency and employment with Clarity. (FAC ¶¶ 7, 12, 41, 44, 51, 140, 150.) Plaintiff does not attach as an exhibit to the FAC a copy of his "investment advisory agreement" with Clarity or a copy of Casa Blanca's Operating Agreement or pled any relevant terms of those agreements that would support Mr. Dalal owing an individual duty toward Plaintiff. Plaintiff also fails to allege Mr. Dalal acted outside the scope of his membership and/or agency with Clarity or Casa Blanca. Conclusory statements that Mr. Dalal engaged in tortious conduct is insufficient.

Accordingly, Defendants' demurrer to the fifth and sixth causes of action is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

B. Casa Blanca Investments, LLC's Demurrer

1. First & Second Causes of Action for Breach of a Written and Oral Contract

The elements of a cause of action for breach of a written or oral contract are: (1) the existence of a contract; (2) a plaintiff's performance or excused nonperformance; (3) a defendant's breach; and (4) resulting damage to a plaintiff. (*Richman v. Hartley* (2014) 224 Cal. App. 4th 1182, 1186.) To show a contract was created a plaintiff must show the terms of the contract were clear enough that the parties could understand their obligations, valuable consideration, and the parties' mutual assent to the contract. (CACI No. 302.) If an action is based on a breach of written contract, the terms must be set forth verbatim in the body of the complaint or a copy of the contract must be attached and incorporated by

reference. (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) Alternatively, "[A] plaintiff may plead the legal effect of the contract rather than its precise language." (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.,* (2002) 29 Cal.4th 189, 198-199.) To plead a contract by its legal effect, a plaintiff must allege the substance of the relevant terms. (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

Plaintiff alleges the "discretionary loan" provision of Casa Blanca's Operating Agreement combined with text messages and emails exchanged between him, Mr. Dalal, and Mr. Meneze formed a written loan agreement between him and Casa Blanca whereby Casa Blanca became obligated to repay Plaintiff the $500,000.00 he paid to Homestead LLC.

Defendant contends the FAC fails to allege the existence of a valid written loan agreement because (1) the "discretionary loan" provision, the alleged text messages and emails do not independently nor collectively establish its required essential terms, (2) text messages are insufficient to satisfy the statute of frauds' writing requirement for loans greater than $100,000.00, (3) the alleged agreement was not subscribed by an individual with authority to bind Casa Blanca, (4) the "discretionary loan" provision is premised on the Company having insufficient available cash/reserves to operate, (5) incurrence of any indebtedness was a major decision that required vote of 67% of the members under section 5.3 of the Operating Agreement, and (6) Plaintiff is not entitled to create a unilateral obligation for Casa Blanca to pay him the interest rate stated in the "discretionary loan" provision.

In his FAC, Plaintiff alleges:

- In the second week of July 2020, Mr. Dalal called him to inquire whether he could make a short-term loan to Casa Blanca related to the Settlement Agreement. (FAC ¶ 40.)
- Mr. Dalal indicated the loan would be paid in 2-4 weeks. (FAC ¶ 44.)
- On July 15, 2020, Mr. Dalal texted Plaintiff that Casa Blanca needed to provide Homestead LLC with $1.5 million, and on behalf of Casa Blanca, asked him to do it. (FAC ¶ 54.)
- Plaintiff responded by text that he could only provide $500,000.00 and Dalal responded, "thanks for gtg back. No issue." (FAC ¶ 55.)

- Via phone call, Mr. Dalal promised Casa Blanca would repay the $500,000.00 loan once it has received the funds from the sale of the Oneonta Drive property that was referenced in the Settlement Agreement. (FAC ¶ 56.)
- Mr. Dalal instructed Plaintiff to await instructions from Mr. Meneze, member and agent of Casa Blanca, and approval to provide the loan funds to Homestead LLC. (FAC ¶ 57.)
- Mr. Meneze sent a text message to Mr. Dalal and Plaintiff stating "Hi Rejeev Good morning! Ok to wire the $500k." Plaintiff then wired $500,000 to Homestead, sent confirmation to Mr. Meneze and Mr. Dalal. Mr. Meneze responded, "Thanks." (FAC ¶¶ 58, 60.)

These allegations do not establish the essential terms of a loan agreement.

First, there are no factual allegations that Mr. Dalal or Mr. Meneze were authorized to bind Casa Blanca to any loan agreement nor are there any factual allegations on whose authority these gentlemen were allegedly negotiating with Plaintiff. Merely alleging that Mr. Dalal and Mr. Meneze were members of Casa Blanca is not tantamount to authorization to negotiate and financially bind the company. Indeed, Plaintiff alleges Mr. Dalal asked Plaintiff to wait until the loan and payment to Homestead was approved. Therefore, as alleged, Mr. Dalal had no independent authority to bind Casa Blanca.

Second, the repayment term of the loan is vague at best. First, the FAC alleges repayment was due within 2-4 weeks but does not state what initiated this period. It then alleges, in contradiction, that repayment was to be made from the sale proceeds of Oneonta Drive property, which was left open-ended.

Third, the FAC does not allege when Mr. Meneze sent Plaintiff the text about wiring the funds, when were the funds wired, who gave instruction to wire the funds to Homestead LLC, and how this instruction was communicated.

Fourth, while the "discretionary loan" provision of the Operating Agreement allows members the choice to loan the Company funds it may need for its ordinary and usual course of business, it does not negate the need for a valid written agreement should such a loan transpire. Nothing in the provision allows it to substitute for a loan agreement.

Fifth, the FAC fails to allege Casa Blanca's assent to repayment of funds Plaintiff wired to Homestead LLC. Contrary to Plaintiff's argument, signatures affixed to the Operation Agreement do not bind Casa Blanca to any other agreement, no matter how interrelated.

Plaintiff fails to allege an agreement. As such, it is unnecessary for the Court to further address application of the statute of frauds or the statute of limitations. Defendant's demurrer to the first cause of action is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

2. Third & Fourth Causes of Action for Common Counts

A common count claim broadly applies "wherever one person has received money which belongs to another, and which in 'equity and good conscience,' or in other words, in justice and right, should be returned." (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809; see also 55 Cal. Jur. 3d Restitution § 25.) The essential elements of common count for money lent, or paid claim are: (1) defendant is indebted to plaintiff in a certain sum (2) for money lent, paid or expended to, or for, the defendant. (*Moya v. Northrup* (1970) 10 Cal.App.3d 276, 280.) Further, "where one person pays out money for the benefit of another, at the latter's request, a common count for money paid, laid out and expended will lie." (*Deicher v. Corkery*, (1962) 205 Cal. App. 2d 654, 661; see also *Halperin v. Raville*, (1986) 176 Cal. App. 3d 765, 772 (1986) ["showing that a person had use and benefit of money raises the obligation to pay for the value received"].)

However, "[w]hen a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action, and is based on the same facts, the common count is demurrable if the cause of action is demurrable." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394.) Defendant's demurrer to the third and fourth causes of action for common counts is accordingly SUSTAINED WITH 20 DAYS LEAVE TO AMEND from service of this formal order.

3. Seventh Cause of Action for Promissory Estoppel

The FAC caption lists "promissory estoppel" as the seventh cause of action. In the body of the FAC, Plaintiff refers to unjust enrichment against Casa Blanca as his seventh cause of action. However, the allegations refer to Casa Blanca's promise to pay Plaintiff interest and principal on a short-term $500,000.00 loan. Similarly vague, the heading on section D of Defendants' motion refers to its

demurrer to the promissory estoppel cause of action. However, Defendant fails to address this claim with argument or authorities.

In any event, to plead promissory estoppel, Plaintiff must plead (1) a clear and unambiguous promise, (2) his reliance on that promise, (3) the reliance was reasonable and foreseeable, and (4) injury by that reliance. (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal. App. 4th 411, 416.)

The Court has already ruled that the current pleading lacks essential contract terms. The FAC also fails to allege a clear and unambiguous promise in its terms. Defendant's demurrer to Plaintiff's cause of action for promissory estoppel is thus SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

4. Eighth Cause of Action for Unjust Enrichment

There appears to be a split of appellate authority as to whether California recognizes an independent cause of action for unjust enrichment. (See *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 ("There is no cause of action in California for unjust enrichment[;]" it "is a general principle, underlying various legal doctrines and remedies, rather than a remedy itself.") (internal quotations omitted); *Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117 (same); *Elder v. Pacific Bell Telephone Co*. (2012) 205 Cal. App. 4th 841 ("This allegation satisfies the elements for a claim of unjust enrichment: receipt of a benefit and unjust retention of the benefit at the expense of another." (internal citations and quotations omitted); *Lectrodryer v. Seoulbank* (2000) 77 Cal. App. 4th 723 (affirming judgment for plaintiff on unjust enrichment claim).

However, this Court falls under the Sixth Appellate District, and that court of appeal unequivocally held in a 2020 decision:

> [Plaintiff's] complaint includes a cause of action entitled unjust enrichment. Summary adjudication of that claim was proper because California does not recognize a cause of action for unjust enrichment. (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 [131 Cal. Rptr. 2d 347] [the phrase "unjust enrichment" does not describe a theory of recovery; it is a general principle underlying various legal doctrines and remedies].)

Hooked Media Group, Inc. v. Apple Inc. (2020) 55 Cal. App. 5th 323, 336. Accordingly, Defendant's demurrer to this cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

Calendar Line 9
Case Name: Tom Rouse vs The Community of Eagle Ridge Owners Association
Case No.: 21CV386439

Before the Court is Community of Eagle Ridge and Owners Association's Motion for Attorney's Fees and Costs and to Amend Judgment. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

The Community of Eagle Ridge located in Gilroy, CA, consists of approximately 958 homes, 141 of which are located in a portion of Eagle Ridge called Eagle Ridge Courtyards ("Courtyards"). Plaintiff is an owner within the Courtyards. All owners within the Courtyards are members of Eagle Ridge Owners Association ("Association") and subject to the Eagle Ridge Declaration of Covenants, Conditions and Restrictions ("CC&Rs"). The Courtyards are also subject to the Declaration of Annexation and Supplemental Restrictions for The Community of Eagle Ridge ("Supplement").

The Supplement mandates that the Association is responsible for the maintenance, repair, and replacement of all landscaping of the Courtyards' front yards, including the landscaping irrigation and drainage systems. (Supplement, §§ 6, 7.2.)

In 2020, the Eagle Ridge Board of Directors ("Board") decided that the front yard landscaping in the Courtyards required rejuvenation ("Project"). On March 31, 2021, a Board meeting was held, and landscaping proposals from Alpine Landscapes, BrightView, and Serpico, were considered for the Project. The Board deferred the decision until after the treasurer could review the budget and financials. (Declaration of Ray Ivicevich, Exhibit C (Minutes of March 31, 2021, Board meeting).)

The Association notified members that a Board meeting would be held on April 14, 2021, and in its revised April 9, 2021 notice, it listed unfinished business concerning the Courtyards on the meeting's agenda. (Declaration of Ray Ivicevich, Exhibit D.) At the April 9, 2021 meeting, the Board discussed and considered the landscaping proposals and bids and voted to hire Alpine Landscapes with the start date of May 1, 2021.

In conjunction with landscaping discussions, Alpine Landscapes recommended removal of warping bender boards that edge the landscaping areas and represented that it would maintain edges of turfs and shrubs naturally. (Declaration of Ryan Dinsmore.)

Plaintiff was previously a member of the Eagle Ridge Landscape Committee until 2020 and was a member of the Eagle Ridge Architectural Committee until the April 14, 2021 meeting. Immediately after attending the April 14th meeting, Plaintiff emailed his resignation to the Board.

On June 28, 2021, Plaintiff emailed the Board after Alpine had removed warped wooden bender boards, demanding that the boards be replaced. (Declaration of Ray Ivicevich, Exhibit I.) In the email, Plaintiff threatened that he was organizing a class action lawsuit of his neighbors to sue to have the bender boards replaced. While ongoing landscaping rejuvenation and maintenance of the Courtyards was being performed and without engaging in any pre-suit ADR, Plaintiff filed his complaint on August 2, 2021. He filed an amended complaint on October 10, 2021, ("FAC") alleging causes of action for injunctive and declaratory relief.

By order dated November 2, 2023, the Court granted Association's motion for summary judgment. Association now seeks its attorneys' fees and costs.

II. Legal Standard and Analysis

Enforcement of recorded CC&Rs of a common interest development is governed by the Davis-Stirling Common Interest Development Act. Section 5975 of that Act provides: "In an action to enforce the governing documents [of a common interest development], the prevailing party shall be awarded reasonable attorney[] fees and costs." (Civ. Code §5975(c).) The prevailing party is entitled to such fees "as a matter of right" and the trial court is "obligated to award attorney fees. . .whenever the statutory conditions have been satisfied." (*Champir, LCC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 589, citing *Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1152.)

Section 5975 does not define "prevailing party." (*Champir*, 66 Cal.App.5th at 590.) The law is well settled, however, that "[t]he analysis of who is a prevailing party under the fee-shifting provisions of the Act focuses on who prevailed 'on a practical level' by achieving its main litigation objectives.'" (*Id.*, quoting *Rancho Mirage Country Club Homeowners Assn. Hazelbaker* (2016) 2 Cal.App.5th 252, 260; *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574; *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94; *Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773.)

"In determining the prevailing party under the Davis-Stirling Act, the court "should 'compare the relief awarded on the . . . claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made. . . by 'a comparison of the extent to which each party has succeeded and failed to succeed in its contentions." (*Champir*, 66 Cal.App.5th at 592 (internal citations and quotations omitted).) The trial court cannot, as Defendants urge the Court to do, use the definition of "prevailing party" under Code of Civil Procedure section 1032(a)(4). (*Id.* at 594.) Case law teaches: "this argument, that a litigant who prevails under the cost statute is necessarily the prevailing party for purposes of attorney fees, has been uniformly rejected by the courts of this state." (*Id.*, quoting *Heather Farms*, 21 Cal.App.4th at 1572.)

Association is plainly the prevailing party in this case, having disposed of Plaintiff's entire action through summary judgment. Plaintiff is incorrect as a matter of law that this Court lacks jurisdiction to address this motion because of the notice of appeal. Plaintiff's cited cases, indeed the quotations Plaintiff includes in his papers, relate to enforcing a judgment that includes an attorneys' fee award.

Accordingly, Association's motion is GRANTED. After review of the evidence and given the Court's familiarity with this case, the Court finds the amount of time spent on the case and the billable rates charged are reasonable for this case type, the level of defense counsel's expertise in this area of law, and the Bay Area. Plaintiff is ordered to pay $73,615 in attorneys' fees and $2,278.59 in costs to Association. Association shall submit an amended judgment reflecting this award.

11	23CV418057	Flavio Lariz vs Rebecca Anderson et al	Motion: Approve Good Faith Settlement
12	23CV422621	MICHAEL HERTZ vs MARK A. OLIVEREZ et al	Motion: Withdraw as attorney
13	20CV368958	TIAO-MOU HSU et al vs BRENT LEE	Motion: Compel
14	20CV368954	CHUN-CHE CHEN vs BRENT LEE	Motion: Compel

Calendar Line 10
Case Name: *Hsin-ti Liu et al vs FORD MOTOR COMPANY, a Delaware Corporation et al*
Case No.: 23CV410646

Before the Court is Plaintiff's Motion for Attorney's Fees. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a lemon law case. Plaintiffs allege they brought their 2021 Ford March-E for repairs 5 times during the first 18 months and 18,000 miles before filing this lawsuit. The parties resolved their dispute with Defendant paying $75,000 and Plaintiffs surrendering the vehicle. The parties could not agree on an amount of reasonable fees and costs, thus this motion followed.

II. Legal Standard

An attorneys' fee award to the prevailing party is mandatory under the Song-Beverly act: "If the buyer prevails in an action under this section, the buyer shall be allowed 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." (Civ. Code §1794(d); *Wohlgemuth v. Catepillar, Inc.* (2012) 207 Cal.App.4th 1252, 1262.) A prevailing buyer is also entitled to reasonably incurred costs. (Civ. Code §1794(d).)

A fee award need not be proportional to the amount recovered, but it must be reasonably incurred. (*Robertson v. Fleetwood Travel Trailers of California, Inc.*, 17 Cal.4th 985, 820 (1998); *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 164 (2006); *McKenzie v. Ford Motor Company* (2015) 238 Cal.App.4th 695, 703; *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 152; *Christian Research Inst. V. Alnor* (2008) 165 Cal.App.4th 1315, 1320.) The U.S. Supreme Court has described the lodestar method as the guiding light of fee-shifting jurisprudence and has established a strong presumption that the lodestar represents the reasonable fee. (*City of Burlington v. Dague* (1982) 5050 U.S. 557, 562.) To determine the lodestar figure, the starting point is the calculation of the reasonable rate for comparable legal services in the local community for non-contingent lawyers of the same type, multiplied by the reasonable number of hours spent on the case. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) A party who qualifies for a fee should recover

for all hours reasonably spent unless special circumstances would render an award unjust. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 632-633.)

The first step is to determine the number of hours reasonably expended in the litigation. (*Serrano v. Priest* (1971) 20 cal.3d 25, 48, fn. 23.) The reasonable hours expended can also include the time spent preparing and litigating the fee application. (*Serrano v. Unruh* 32 Cal.3d at 639.) The next step is to determine reasonable rates. Attorneys' rates are reasonable if they are within the range of rates charged by private attorneys of similar skill, reputation and experience for comparably complex litigation. *See, e.g. Bihun v. AT&T Info. Sys.* (1993) 13 Cal.App.4th 976, 997. The court may also rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate. (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.)

Once the lodestar amount is determined, the court may increase that amount by a multiplier depending on the result obtained, litigation risks, novelty and difficulty of the legal and factual issues involved in the case and the skill exhibited by counsel. (*In re Consumer Privacy Cases,* 175 Cal.App.4th 545, 556.) The Court may also decrease the lodestar amount. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 840.)

III. Analysis

Defendant argues Plaintiff's counsel is only entitled to $2,500 in attorneys' fees because Defendant offered to buy back the vehicle and pay that amount in attorneys' fees before this case was filed. Plaintiff's counsel argues Defendant is omitting the fact that Plaintiff had already rejected an identical offer from Defendant before engaging counsel and that it would be reversible error for the Court to reduce the attorney fee request on the basis of Plaintiff's refusal to settle earlier.

First, Plaintiff's counsel's characterization of *Reck v. FCA US LLC* (2021) 64 Cal. App. 5th 682 is inaccurate. That court states:

> We conclude that in the context of public interest litigation with a mandatory fee-shifting statute such as the Song-Beverly Act, it is an error of law for the trial court to *categorically* deny or reduce an attorney fee award on the basis of a plaintiff's failure to settle when the ultimate recovery exceeds the Code

> of Civil Procedure section 998 settlement offer. (*Id.* at 687 (emphasis added).)
>
> …
>
> The trial court here did not undertake a lodestar analysis of fees reasonably incurred following appellants' rejection of the settlement offer, concluding instead that it was unreasonable for appellants to have prolonged the litigation by rejecting defendant's reasonable offer of compromise. Because the trial court's approach here was based on a mistake of law, we shall reverse. (*Id.*)

Thus, the problem with the trial court's decision in *Reck* was not the reduction of the award per se, but rather the lack of lodestar analysis of the fees incurred after the settlement offer was made before reducing the award. Understandably, the appellate court did not want to let stand a rule that in every case involving a fee shifting statute where a plaintiff declines a settlement offer, that plaintiff could be refused fees:

> Allowing the trial court to categorically deny attorney fees simply because the plaintiff turned down a Code of Civil Procedure section 998 offer that is inferior to their ultimate recovery places too large a settlement club in the court's hands. In making the decision to reject a section 998 offer, the plaintiff takes on the risk that he or she will not obtain a better result and will be deprived of postoffer attorney fees *and* be made to pay the other side's fees or costs. Plaintiffs must be free to take these kinds of calculated risks without fear that the trial court may deny reasonably incurred postoffer attorney fees even after successfully litigating their matter to a more favorable resolution. To endorse a different rule would create inordinate pressure on plaintiffs to accept low or unreasonable section 998 settlement offers, and undermine the prosecution of meritorious civil rights or public interest litigation and the legislative interest in awarding a prevailing plaintiff their reasonable attorney fees and costs under mandatory fee-shifting statutes. (*Id.* at 698.)

Reck also makes clear that a settlement rejection can be considered in the context of a fee motion:

> Nothing about our decision circumscribes the trial court's discretion to evaluate the manner in which plaintiffs prosecute their case after rejecting a settlement offer. In evaluating the reasonableness of an attorney fee request, the trial court may consider "'whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended.'" (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271 [105 Cal. Rptr. 3d 723]; see also *Morris, supra*, 41 Cal.App.5th at p. 39 ["Plainly, it is appropriate for a trial court to reduce a fee award based on its reasonable determination that a routine, noncomplex case was overstaffed to a degree that significant inefficiencies and inflated fees resulted."].) Finally, because one of the factors in a lodestar analysis involves an evaluation of the "results achieved" by the plaintiff, we do not agree with appellants' suggestion that the trial court may not consider a rejected Code of Civil Procedure section 998 offer at all. The reasonableness of the tendered section 998 offer in relation to the results obtained by the plaintiff may be a consideration in the overall recovery of a reasonable attorney fee award. (*Nightingale, supra*, 31 Cal.App.4th at p. 104; see *Harman v. City and County of San Francisco* (2006) 136 Cal.App.4th 1279, 1316 [39 Cal. Rptr. 3d 589].) (*Id.* at 699-700.)

The Court also agrees with Defendant that *Dominguez v. American Suzuki Motor Corp.* (2008) 160 Cal. App. 4th 53, 60 provides useful instruction in that it holds:

> Based on a plain reading of the applicable statutory provisions, we cannot conclude the Legislature intended that every time a manufacturer repurchases or replaces consumer goods, a consumer is entitled to attorney fees, regardless of whether it was pre- or postcommencement of litigation.

Thus, while the Court will not, as Defendant requests, reduce the award to $2500 simply because Plaintiff refused to accept Defendant's buy back offer before this lawsuit was filed, the Court will carefully consider "whether the case was overstaffed, how much time the attorneys

spent on particular claims, and whether the hours were reasonably expended" and the fact that this is "a routine, noncomplex case" in determining how much of the requested $36,005 in attorneys' fees Plaintiff's counsel should be permitted to recover.

Case complexity. There can be no dispute that there were no special or complex issues raised by this lemon law case. This matter was simple and routine. And, the law firm handling Plaintiff's case is called "the Lemon Pros, LLP." Plainly, they advertise (and the supporting attorney declaration confirms) that they are experts in this area and handle thousands of such cases. Accordingly, Plaintiff's counsel had numerous exemplar complaints, discovery requests, motions to compel and for summary judgment, and case management tools, such as chronologies, to build from in litigating this case.

Staffing. Plaintiff's counsel staffed four different billers on this case for a period of January 2023 through the filing of the motion for fees. There is no explanation for why so many different billers would be necessary to handle a straightforward case. This number of billers would necessarily increase the amount of fees, since there is overlapping work reflected on the bills, and each different biller would have to confer with one another and review the file. The Court finds this staffing excessive for this case.

Hours spent. The Court finds excessive hours were billed for drafting the complaint, drafting discovery requests, and motion practice. The undersigned Court knows firsthand that these documents are not drafted from scratch for each new plaintiff and vehicle; they are virtually identical in each case.

Billable rates. While expertise can support a higher billable rate, the Court finds the $695 and $525 rates too high for this case type.

Based on this analysis, the Court reduces the hours for Michael Saeedian to 15 and the billable rate to $350, eliminates the .08 hours for Adina Ostoia, reduces the hours for Christopher Urner to 10 and the billable rate to $300, and reduces the billable rate for Jorge Acosta to $200, leaving the number of hours intact, as it appears Mr. Acosta was the primary person working on this file. With these adjustments, the total attorneys' fee award is $13,690.

Defendant also asks the Court to tax all of Plaintiff's costs based on the same argument that none of those costs were necessary because Plaintiff could have just accepted the pre-litigation buyback. However, the above case analysis makes clear the Court cannot deny costs on this basis. Defendant offers no other analysis. Accordingly, the Court awards Plaintiff $3,729.61 in costs.