SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 3/14//2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (3/13/2024) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept. and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV423984	Vinod Mathew vs Jennifer Wang et al	Hearing: Demurrer to Plaintiff's Complaint and to Stay by Defendant Jennifer Wang Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	23CV424490	Dr. Neelima Kethineni, MD vs Techorbit Inc. et al	Hearing: Demurrer to Plaintiff 's Verified Complaint by Defendant Guadalupe Chipana Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.
LINE 3	17CV311664	Thuy Pham vs An Nguyen et al	Hearing: Motion hearings *c/f 2/13/2024 minute order** for attorney fees by defendant Olivia Nguyen Ctrl click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order
LINE 4	23CV000033	AFFINIA DEFAULT SERVICES, LLC vs IN RE: 1501 DESDEMONA CT, SAN JOSE , CA 95121	Hearing: Motion for interpleader intending to deposit funds with the court by Petitioner Affinia Default Services, LLC Order to Deposit Surplus Funds Pursuant to Civil Code sections 2924j(c) and (d) was GRANTED by order dated 2/15/2024 filed 2/16/2024.
LINE 5	24CV431215	El Sol Real Estate Investments v. Anthony Cambell, Steffon Taylor, et al.	Motion: Quash by defendants Anthony Campbell, Stefon Taylor sued as Steffon Taylor APPEAR. Please bring proposed order.
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1

Case Name: *Vinod Mathew, as trustee of The Mathew Wang Living Trust Dated May 5, 2021 v. Jennifer Wang, et al.*
Case No.: 23-CV-423984

Demurrer, or Alternatively, Motion to Stay to the Complaint by Defendant Jennifer Wang

Factual and Procedural Background

This is a real property action brought by plaintiff Vinod Mathew, as trustee of The Mathew Wang Living Trust Dated May 5, 2021 ("Plaintiff") against defendants Jennifer Wang ("Jennifer") and Mortgage Electronic Registration Systems, Inc. (collectively, "Defendants").

According to the first amended complaint ("FAC"), the subject of this action concerns certain real property located at 3962 Ross Avenue in San Jose, California ("Property"). (FAC at ¶ 1.)

The Mathew Wang Living Trust Dated May 5, 2021 ("Trust") was and is the co-owner of the Property. (FAC at ¶ 2.) Plaintiff and his late wife, Betty Wang ("Betty"[1]), were co-trustees of the Trust. (Ibid.) Upon Betty's passing, Plaintiff became the sole trustee of the Trust. (Ibid.)

In March 2010, Jennifer and Betty purchased the Property and held title to the Property as tenants-in-common, each with an undivided 50% interest. (FAC at ¶ 10.) Thereafter, both lived at the Property together. (Ibid.)

In December 2014, Jennifer and Betty refinanced their mortgage loan on the Property. (FAC at ¶ 11.) As part of the refinance, Betty was asked by the lender to execute a grant deed that had been prepared by the lender. (Ibid.) The grant deed stated that Betty was to convey her property interest to "Betty Wang, a married woman as her sole and separate property and Jennifer Wang, an unmarried woman, as joint tenants with right of survivorship." (Ibid.) The grant deed was recorded by the Santa Clara County Clerk on March 2, 2015. (Ibid.)

The transfer was based on the lender's mistaken assumption that Jennifer was not on title and that, after the transfer, Betty and Jennifer would each hold an equal interest in the Property as joint tenants. (FAC at ¶ 12.) Accordingly, no consideration was exchanged related to this transfer and a deed of trust securing the refinanced loan ("2015 DOT") that was recorded after the 2015 Grant Deed identified the borrowers as Betty and Jennifer as joint tenants with right of survivorship as to Betty's 50% interest. (Ibid.) The 2015 DOT was recorded by the Santa Clara County Clerk on March 2, 2015. (Ibid.)

Jennifer and Betty mutually understood that the 2015 Grant Deed would re-establish their equal and undivided 50% interests in the Property. (FAC at ¶ 13.) Therefore, the 2015 Grant Deed was executed and recorded as a result of a mutual mistake because it did not

[1] The court refers to Betty Wang and Jennifer Wang by their first names for purposes of clarity. No disrespect is intended. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.) According to the parties, Betty and Jennifer are sisters.

properly convey interest to or establish title to the Property in the manner that was agreed upon by Jennifer and Betty. (Ibid.)

In January 2021, Jennifer and Betty again refinanced their mortgage loan on the Property. (FAC at ¶ 14.) As further evidence of their understanding that they were co-owners of the Property, the deed of trust securing the refinanced loan (the "2021 DOT) identified the borrowers as Betty and Jennifer as joint tenants with right of survivorship. (Ibid.) The 2021 DOT was recorded by the Santa Clara County Clerk on January 8, 2021. (Ibid.)

In accordance with Betty's belief that she held a 50% interest in the Property, Betty executed a trust transfer deed on May 17, 2021 ("2021 Trust Transfer Deed") that conveyed "all of her undivided 1/2 interest" to the Trust. (FAC at ¶ 15.) Pursuant to Civil Code section 683.2, the trust transfer severed the joint tenancy and created a tenancy-in-common. (Ibid.) Upon Betty's passing on March 16, 2022, Plaintiff became the sole trustee of the Trust. (Ibid.) Thus, Plaintiff, as trustee of the Trust, and Jennifer each hold an undivided 50% interest in the Property as tenants-in-common. (Id. at ¶ 17.)

Plaintiff has demanded the sale of the Property and equal distribution of the sale proceeds, in accordance with the parties' respective interests in the Property. (FAC at ¶ 19.) Jennifer however objects to selling the Property and distributing the proceeds of the sale of the Property equally in connection with the parties' ownership interest. (Ibid.)

Also, after Betty's passing, Jennifer constructively ousted Plaintiff from the Property by denying him the right to access the Property. (FAC at ¶ 33.) Jennifer has further denied Plaintiff the benefit of rents or profits that could be derived from the Property. (Ibid.)

On December 14, 2023, Plaintiff filed the operative FAC against Defendants alleging causes of action for: (1) partition of real property; (2) reformation or cancellation of instrument; and (3) damages for ouster.

On January 26, 2024 defendant Jennifer filed a cross-complaint against Plaintiff on a rejected creditor's claim setting forth causes of action for: (1) breach of implied agreement; and (2) equitable contribution.

Currently before the court is a demurrer, or alternatively, a motion to stay to the FAC by defendant Jennifer. Plaintiff filed written opposition. Jennifer filed reply papers. Both sides filed requests for judicial notice.

A case management conference is set for March 26, 2024.

Demurrer to the FAC

Defendant Jennifer argues the FAC is subject to demurrer as there is another action pending between the same parties on the same cause of action and thus this action should be abated. (Code Civ. Proc., § 430.10, subd. (c).)

Defendant Jennifer's Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

Here, defendant Jennifer requests judicial notice ("RJN") of the following:

(1) Acquisition Deed recorded with the Santa Clara County Recorder's Office on March 25, 2010 under Document No. 20655494 (Ex. 2);
(2) Interspousal Transfer Deed recorded with the Santa Clara County Recorder's Office on December 12, 2012, under Document No. 21997744 (Ex. 3);
(3) Grant Deed recorded with the Santa Clara County Recorder's Office on March 2, 2015, under Document No. 22869013 (Ex. 4);
(4) Trust Transfer Deed recorded with the Santa Clara County Recorder's Office on May 17, 2021, under Document No. 2493334 (Ex. 5);
(5) Amended Creditor's Claim filed by Jennifer Wang in the Probate Action on March 8, 2023 (Ex. 6);
(6) Petition for Order Confirming Decedent Died Holding Title to Real Property and the Property Interest Belongs to Another ("the 850 Petition") filed on April 4, 2023, by Jennifer Wang in the Probate Action in Santa Clara Superior Court (case no. 22PR193233) (Ex. 7).

Exhibits 1-4 are subject to judicial notice as real property documents recorded in Santa Clara County. (See Evid. Code, § 452, subd. (h); see also *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265, disapproved on other grounds in *Yvanova v. New Century Morg. Corp.* (2016) 62 Cal.4th 919 [court may take judicial notice of the existence and recordation of real property records]; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 803 ["A court may take judicial notice of a recorded deed."].) The court may take judicial notice of Exhibits 5-6 as records of the superior court under Evidence Code, section 452, subdivision (d). (See *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own file].) Plaintiff does not oppose the request and the exhibits are relevant to arguments raised in support of the demurrer and motion to stay. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].)

Accordingly, the request for judicial notice is GRANTED.

Plaintiff's Request for Judicial Notice

In opposition, Plaintiff requests judicial notice of the fact that defendant Jennifer filed a declaration in support of an Amended Creditor's Claim on March 8, 2023. (See Plaintiff's RJN at Ex. A.) The declaration is a court record filed in the Probate Action and thus subject to judicial notice under Evidence Code section 452, subdivision (d). The court takes judicial notice only of the *existence* of the declaration and not the truth of matters contained therein. (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 [while courts are free to take judicial notice of the existence of each document in a court file, courts may not take judicial notice of allegations in affidavits and declarations in

court records as such matters are reasonably subject to dispute and therefore require formal proof].)

Consequently, the request for judicial notice is GRANTED.

Legal Standard

"In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.' " (*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.)

"The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. … [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Analysis

Defendant Jennifer argues the FAC is subject to demurrer as there is another action pending in the probate court to resolve the 850 Petition.[2] Because the probate action also involves Plaintiff's same claims of ownership, title, and possession of the Property, Jennifer contends the demurrer should be sustained and the civil action abated until the probate court's decision on the 850 Petition.

A demurrer on the ground that there is another action pending between the same parties on the same cause of action is not judicially favored. (C*onservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 176.) "A demurrer raising this objection to a second action between the same parties 'is strictly limited so that…the defendant must show that the parties, cause of action, and issues are identical, and that the same evidence would support the judgment in each case.' " (*Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 856, italics omitted.) As explained by another case:

> "A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action. [Citations.] In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be

[2] Probate Code section 850 allows the filing of various petitions to recover property when the dispute involves a conservatorship or guardian, the personal representative of a decedent's estate, or a trustee. (*Parker v. Schwarcz* (2022) 84 Cal.App.5th 418, 424.) Section 850 provides a way for estates to resolve ownership disputes with respect to property constituting assets of an estate. (*Id*. at p. 430.)

maintained only where a judgment in the first action would be a complete bar to the second action. [Citation.] Where a demurrer is sustained on the ground of another action pending, the proper order is not a dismissal, but abatement of further proceedings pending termination of the first action. [Citations.]" (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787-788 (*Plant Insulation Co.*), italics omitted.)

"The rule that the pendency of one action abates another is based in part upon the practical supposition that the first suit is effective and affords an ample remedy to the party and the second is unnecessary and vexatious, and in part upon the legal principle that the law abhors a multiplicity of actions." (*National Auto Ins. Co. v. Winter* (1943) 58 Cal.App.2d 11, 16.)

"In order to sustain the plea of another action pending it is essential that it shall appear: (1) that both suits are predicated upon the same cause of action; (2) that both suits are pending in the same jurisdiction; and (3) that both suits are contested by the same parties." (*Colvig v. RKO General, Inc.* (1965) 232 Cal.App.2d 56, 70.)

Here, there is no dispute that both the probate action and the civil case involve the same parties and are pending in the same jurisdiction. Defendant Jennifer argues both the 850 Petition and the civil action involve the same issues, namely ownership, title, and the right to possession of the Property. The 850 Petition, which the court takes judicial notice of, requests an order from the probate court to determine the relative interests of the parties in the Property. (See Jennifer's RJN at Ex. 7.) But, as pointed out in opposition, the FAC alleges claims for partition, reformation/cancellation of instruments and a third cause of action seeking damages for ouster. Such claims involve different issues than those raised in the probate action and thus the demurrer is not sustainable on this ground.

Therefore, the demurrer to the FAC on the ground that another action is pending is OVERRULED.

Motion to Stay

In the alternative, defendant Jennifer moves for a stay of the civil action until the probate court rules on the 850 Petition to determine ownership of the Property. In support, Jennifer relies on the doctrine of exclusive concurrent jurisdiction.

" 'Under the rule of exclusive concurrent jurisdiction, "when two [California] superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved." [Citations.] The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits.' [Citation.]" (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-770 (*Garamendi*).)

"Although the rule of exclusive concurrent jurisdiction is similar in effect to the statutory plea in abatement, it has been interpreted and applied more expansively, and therefore may apply where the narrow grounds required for a statutory pleas [in] abatement do not exist.

[Citation.] Unlike the statutory plea [in] abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions. [Citations.] If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings." (*Plant Insulation Co., supra,* 224 Cal.App.3d at p. 788.)

" 'An order of abatement issues as a matter of right [i.e., mandatory] not as a matter of discretion [i.e., discretionary] where the conditions for its issuance exist.' [Citation.] This is the case whether a right to abatement exists under the statutory plea in abatement [citation] or the judicial rule of exclusive concurrent jurisdiction [citation]. Where abatement is required, the second action should be stayed, not dismissed. [Citation.]" (*Garamendi, supra,* 20 Cal.App.4th at pp. 770-771.)

Here, neither side disputes that the probate action was filed prior to the civil case or that both actions involve the same parties. But, in order to prevail on the motion to stay, defendant Jennifer must demonstrate that the probate court has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. (*Plant Insulation Co., supra,* 224 Cal.App.3d at p. 788.) She concedes that the probate court has jurisdiction over the issue of ownership, title, and possession of the Property as those issues have been presented to the court in the 850 Petition. (See Motion at p. 8:18-22; Jennifer's RJN at Ex. 7.) However, as pointed out in opposition, the FAC also seeks damages in conncection with a cause of action for ouster which cannot be resolved the probate action. (See OPP at p. 6:17-25; FAC at ¶¶ 31-35.) Thus, the probate court lacks the power to litigate all the issues and grant all the relief which the parties may be entitled to under the pleadings.

Accordingly, the motion to stay based on the doctrine of exclusive concurrent jurisdiction is DENIED.

Disposition

The demurrer to the FAC on the ground that another action is pending is OVERRULED.

The motion to stay based on the doctrine of exclusive concurrent jurisdiction is DENIED.

The court will prepare the Order.

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Calendar Line 2

Case Name: *Dr. Neelima Kethineni, M.D. v. Techoribit Inc., et al.*
Case No.: 23-CV-424490

Demurrer to the Complaint by Defendant Diana C. Guadalupe Chipana, dba Wealth Recovery Solutions

Factual and Procedural Background

This is an equitable action to set aside a default and default judgment by plaintiff Dr. Neelima Kethineni, M.D. ("Dr. Kethineni") against defendants Techorbit Inc. ("Techorbit") and Diana C. Guadalupe Chipana dba Wealth Recovery Solutions ("Guadalupe Chipana") (collectively, "Defendants").

Dr. Kethineni is a medical doctor with a specialization in infectious diseases who practices at San Joquin General Hospital. (Complaint at ¶ 2.)

In December 2010, non-party Neelinfo, Inc. ("Neelinfo"), a California corporation, entered into a commercial agreement ("Agreement") with defendant Techorbit, a Texas corporation. (Complaint at ¶ 3.)

On June 13, 2012, Techorbit filed an action against Dr. Kethineni and other parties for breach of contract ("Original Action"). (Complaint at ¶ 4.) The complaint in that action falsely alleged that Dr. Kethineni: (1) "entered into" the Agreement; (2) "operated" Neelinfo; and (3) was an alter ego of Neelinfo. (Id. at ¶¶ 7-9.)

Dr. Kethineni did not receive service of the summons or complaint in the Original Action. (Complaint at ¶ 10.) No family member, relative, employee, or agent received service of the summons or complaint on her behalf. (Ibid.) Techorbit however claims it effectuated substitute service of the summons and complaint as to Dr. Kethineni on July 9, 2012. (Id. at ¶ 12.)

On August 24, 2012, a default was entered in the Original Action against Neelinfo, Dr. Kethineni and other individuals. (Complaint at ¶ 5.) Thereafter, a default judgment was entered against them on October 29, 2012 in the total amount of $57,932.76. (Ibid.) Subsequently, Techorbit's interest in the Original Action's default judgment was assigned to defendant Guadalupe Chipana. (Id. at ¶ 6.) Dr. Kethineni did not become aware of the default and default judgment until Guadalupe Chipana levied her bank account late last year. (Id. at ¶ 11.)

On October 25, 2022, Dr. Kethineni filed a claim of exemption in the Original Action which resulted in three hearings and two orders in connection with her claim. (Complaint at ¶ 15.)

On February 22, 2023, Dr. Kethineni filed a motion ("Default Motion") to lift the default and default judgment in the Original Action. (Complaint at ¶ 16.) On May 24, 2023, the court (Hon. Rosen) denied the Default Motion on two grounds: (1) Dr. Kethineni filed the Default Motion more than two years after default judgment was entered; and (2) Dr. Kethineni attended three hearings in the Original Action and was the subject of two orders relating to the claim of exemption. (Id. at ¶ 17.)

After filing a notice of appeal to the Default Motion Order, Dr. Kethineni filed an abandonment of appeal on September 19, 2023. (Complaint at ¶ 17.)

On October 18, 2023, Dr. Kethineni filed the operative complaint against Defendants alleging causes of action for declaratory relief: (1) setting aside of default and default judgment; (2) setting aside of all orders to garnish and levy Dr. Kethineni's funds and assets; (3) return of all garnished and levied funds to Dr. Kethineni; and (4) Dr. Kethineni's dismissal from the Original Action.

On December 8, 2023, defendant Guadalupe Chipana filed the motion presently before the court, a demurrer to the complaint. Guadalupe Chipana filed a request for judicial notice in conjunction with the motion. Dr. Kethineni filed written opposition. Guadalupe Chipana filed reply papers.

A case management conference is set for April 16, 2024.

Demurrer to the Complaint

Defendant Guadalupe Chipana argues the complaint is subject to demurrer as each claim fails to state a valid cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

Defendant Guadalupe Chipana requests judicial notice of various court filings in connection with the Original Action as well as other cases along with statements of information related to Neelinfo. (See Request for Judicial Notice at Exs. A-X.) In opposition, Dr. Kethineni filed various objections to the request. Despite the objections, the court declines to consider the request for judicial notice as the exhibits are not material in resolving issues raised by the demurrer for reasons stated below. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant"].)

Accordingly, the request for judicial notice is DENIED.

Legal Standard

"In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which

may be judicially noticed.' " (*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.)

"The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. … [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Analysis

Here, the complaint alleges claims seeking equitable relief in connection with a default and subsequent default judgment.

"Apart from any statute, courts have the inherent authority to vacate a default and default judgment on equitable grounds such as extrinsic fraud or extrinsic mistake. [Citations.] 'Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has been "deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense." ' [Citations.] In contrast, the term 'extrinsic mistake' is 'broadly applied when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits. [Citations.] "Extrinsic mistake is found when [among other things] … a mistake led a court to do what it never intended … ." ' [Citations.]" (*Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97-98 (*Bae*).)

"A party may seek equitable relief from a default and default judgment by filing a motion in the pertinent action or initiating an independent action." (*Bae, supra,* 245 Cal.App.4th at p. 98.)

"A party seeking relief under the court's equitable powers must satisfy the elements of a 'stringent three-pronged test': (1) a satisfactory excuse for not presenting a defense, (2) a meritorious defense, and (3) diligence in seeking to set aside the default." (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 29; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982-983 (*Rappleyea*).)

Furthermore, "[w]hen a default *judgment* has been obtained, equitable relief may be given only in exceptional circumstances. '[W]hen relief under section 473 is available, there is a strong public policy in favor of granting relief and allowing the requesting party his or her day in court. Beyond this period there is a strong public policy in favor of the finality of judgments and only in exceptional circumstances should relief be granted.' [Citations.]" (*Rappleyea, supra,* 8 Cal.4th at pp. 981-982.)

Defendant Guadalupe Chipana persuasively argues that the complaint is devoid of facts establishing the necessary elements for equitable relief from a default and default judgment. Nor does the complaint allege facts suggesting exceptional circumstances are in play to warrant relief from the default judgment.

In opposition, Dr. Kethineni contends the factors outlined in cases like *Rappleyea* are not applicable in this instance. (See OPP at p. 6:6-8.) In support, the opposition cites the following cases: (1) *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215; (2) *Groves v. Peterson* (2002) 100 Cal.App.4th 659; (3) *Ansley v. Super. Ct.* (1986) 185 Cal.App.3d 477; and (4) *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318. (Id. at p. 6, fn. 16.) These cases however are not persuasive as they do not address a contrary standard for establishing the elements of an independent action for equitable relief from a default judgment. And, aside from citing the cases in a footnote, Dr. Kethineni does not even attempt to substantively address these cases in support of this contention. (See *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 160 [appellate court may disregard points raised in a footnote rather than being properly presented under a discrete heading with appropriate analysis].)

The demurrer is therefore sustainable on this ground but Dr. Kethineni will be afforded an opportunity for leave to amend. (See *City of Stockton v. Super. Ct.* (2007) 42 Cal.4th 730, 747 [if the plaintiff has not had an opportunity to amend the pleading in response to a motion challenging the sufficiency of the allegations, leave to amend is liberally allowed as a matter of fairness, unless the pleading shows on its face that it is incapable of amendment].) Having sustained the demurrer on this ground, the court declines to address the remaining arguments in the moving papers.

Consequently, the demurrer to the complaint is SUSTAINED WITH 20 DAYS' LEAVE TO AMEND for failure to state a claim.

Disposition

The demurrer to the complaint is SUSTAINED WITH 20 DAYS' LEAVE TO AMEND for failure to state a claim.

The court will prepare the Order.

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Calendar Line 3
Case Name: *Pham vs Nguyen, et al*
Case No. 17-CV-3111664

Good cause appearing, defendant Olivia Nguyen ("Nguyen")'s motion pursuant to the mandatory fee-shifting provisions of Code of Civil Procedure ("CCP") section 425.16(c) for an award of fees and costs incurred in connection with bringing her successful anti-SLAPP Special Motion to Strike ("anti SLAPP motion") is GRANTED against Plaintiff Thuy Pham ("Plaintiff") in the reasonable amount of **$105,612.50** attorneys' fees plus costs of **$1,5660.40** for a total of **$121,272.90.**

Nguyen is the "prevailing defendant under CCP section 425.16(c), which mandates that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (CCP § 425.16(c).) On November 8, 2023, the Court issued an order granting Nguyen's anti-SLAPP motion with respect to six of the seven counts contained in Plaintiff's First Amended Complaint. By this order, Nguyen achieved a substantial benefit by bringing the anti-SLAPP motion and is therefore entitled to an award of attorney's fees and costs. (CCP § 425.16(c); *Mann v Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 340 (*Mann*).)

The prevailing defendant in an anti-SLAPP motion "shall be entitled" to recover attorney's fees and costs incurred with the motion. (CCP § 425.16(c).) "[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) Such an award includes attorney's fees and costs incurred on any appeal. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499.)

"[A] party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion." (*Mann, supra,* 139 Cal.App.4th at 340.) Typically, only those fees and costs incurred in connection with the successful portion of the anti-SLAPP motion may be recovered, but the court has discretion to determine the appropriate amount of fees and costs to be awarded in such a situation. (See *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 82; *Mann, supra,* 139 Cal.App.4th at 340.)

When a partially successful defendant "successfully narrowed the scope of the lawsuit, limiting discovery, reducing potential recoverable damages, and altering the settlement posture of the case", that defendant is the prevailing party entitled to attorney's fees. (*Mann , supra,* 139 Cal.App.4th 328, 340.)

Here, Nguyen's anti-SLAPP motion substantially narrowed the scope of the lawsuit, limited discovery, reduced the potential recoverable damages, and altered the settlement posture of the case. After her anti-SLAPP motion, only one claim remains against Nguyen. Nguyen is the prevailing party entitled to an award of attorney's fees and costs under CCP section 425.16(c).

In this case, because Nguyen only partially prevailed on their anti-SLAPP motion, there are numerous factors to be considered in determining her right to fees and costs. Those factors were discussed at length in *Mann, supra*, 139 Cal.App.4th 328, 244-345:

> An award of attorney fees to a partially prevailing defendant under section 425.16, subdivision (c) thus involves competing public policies: (1) the public policy to discourage meritless SLAPP claims by compelling a SLAPP plaintiff to bear a defendant's litigation costs incurred to eliminate the claim from the lawsuit; and (2) the public policy to provide a plaintiff who has facially valid claims to exercise his or her constitutional petition rights by filing a complaint and litigating those claims in court. (§§ 425.16, 425.17; see *Ketchum, supra*, 24 Cal.4th at p. 1131.) In balancing these policies, we conclude a defendant should not be entitled to obtain *as a matter of right* his or her entire attorney fees incurred on successful and unsuccessful claims merely because the attorney work on those claims was overlapping. Instead, the court should first determine the lodestar amount for the hours expended on the successful claims, and, if the work on the successful and unsuccessful causes of action was overlapping, the court should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate.
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> This analysis includes factors such as the extent to which the defendant's litigation posture was advanced by the motion, whether the same factual allegations remain to be litigated, whether discovery and motion practice have been narrowed, and the extent to which future litigation expenses and strategy were impacted by the motion. The fees awarded to a defendant who was only partially successful on an anti-SLAPP motion should be commensurate with the extent to which the motion changed the nature and character of the lawsuit in a practical way. The court should also consider any other applicable relevant factors, such as the experience and abilities of the attorney and the novelty and difficulty of the issues, to adjust the lodestar amount as appropriate. (See *Ketchum, supra*, 24 Cal.4th at p. 1132.)

(*Mann, supra* 139 Cal.App.4th at 344-345.)

Plaintiff argues that because the claims for violation of Family Code section 2040, violation of court orders, and constructive trust were disposed of on demurrer, Nguyen is not entitled to recover any attorney's fees relating to these claims.

First, it must be noted that the billing entries submitted in Exhibit B, excluded any charges related to Nguyen's demurrer to the complaint. (Buss Supp. Decl. ¶ 2.) Those were excluded by redaction. (*Ibid*.)

Secondly, Ms. Nguyen moved to strike those claims in her original motion to strike. (Buus Supp. Decl., ¶ 3, Exhibit F.) Thereafter, Plaintiff conceded the invalidity of those claims in her briefs in opposition to the demurrer and the motion to strike, as stated in the Court's ruling on those motions. (See Opp. to Motion, Ex. 5, pp. 10, 13-14.) Since the Court initially found that the motion to strike did not satisfy the first prong of the Anti-SLAPP motion, it did not address the factual merits of those claims. Instead, noting Plaintiff's concessions, the Court sustained the demurrer as to those claims and did not have to address them at any point in time with respect to the motion to strike.

But the result is that Ms. Nguyen moved to strike those claims in her original anti-SLAPP motion, and they were effectively abandoned by the Plaintiff. The court agrees there is no reason to reduce any award of attorney's fees incurred as to those claims.

Plaintiff claims the bills are vague and should be reduced by 48.5 hours for block billing. In *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, the court explained the danger of block billing at page 1325:

> "[B]lock billing 'obscured the nature of some of the work claimed,' further damaging counsel's credibility. Block billing, while not objectionable per se in our view, exacerbated the vagueness of counsel's fee request, a risky choice since the burden of proving entitlement to fees rests on the moving party. [Citation.]

"The law is clear, however, that an award of attorney fees may be based on counsel's declarations, without production of detailed time records. [Citations.]" (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) Second the time records contained in Exhibit B have a "presumption of credibility." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.) As the *Horsford* court said: "We think the verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Id*.)

Here, the time records in Exhibit B are detailed and clear, contain very little block billing, and were supported by counsel's declaration that the time spent was "reasonable and necessary". (Decl. Buus filed 12/14/2023, ¶ 7.) As previously noted, Nguyen's counsel has redacted entries related to her demurrer. (Buss Supp. Decl. ¶ 2.)

Plaintiff claims that 1.6 hours appear to be either administrative, duplicative, or unnecessary task that should be excluded and that 18.80 hours could not be determined if connected to the anti-SLAPP motion and should be excluded. The court agrees to this 20.4-hour reduction requested by the Plaintiff.

Plaintiff claims that the 120 hours on the appeal were excessive but provided no evidence of what would be reasonable.

Plaintiff also requested that the court review Exhibit B to determine whether the time requested was excessive and whether a lower rate should be applied.

The court is not persuaded by Plaintiff's arguments that the issues were not difficult or that Nguyen's attorneys should have been more efficient due to their experience. To the contrary, this case involves a complicated fact pattern and legal issues that were not run-of the mill (i.e., claims under the Voidable Transaction Act, and for aiding and abetting tort, and creditor's suit.)

Trial courts have discretion to decide which of the hours expended by the attorneys was reasonably spent on litigation. (*Hammond v. Agran* (2002) 99 Cal.App.4th 115, 133, disapproved on other grounds in *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1226.) "However, the predicate of *any* attorney fee award … is the necessity and usefulness of the conduct for which compensation is sought." (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 846.)

As attested in paragraph 7 of the Declaration of William L Buss in support of this motion, the amounts reflected in the detailed billings in Exhibit B were actually incurred in

connection with the motion to strike and were reasonable and necessary. Other than the 20.4-hour reduction discussed above, Plaintiff has not shown otherwise.

Nguyen's objection to Plaintiff's Exhibit 8 and a part of Exhibit 10 that contains informal settlement negotiations under Evidence Code 1152 is SUSTAINED.

Plaintiff argues that the rate of $595 is excessive but fails to present any evidence showing the prevailing rate for similar work in the community where the court is located is something lower than that. As the court explained in *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437:

> The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom (see, e.g., *Ketchum, supra*, 24 Cal.4th at p. 1132), and this includes the determination of the hourly rate that will be used in the lodestar calculus. (See, e.g., *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 700–703.) In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009), the difficulty or complexity of the litigation to which that skill was applied [Citations.] and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases. (*Heritage*, at p. 1009.)

(*569 East County Boulevard LLC , supra*, 6 Cal.App.5th at 437.)

The court finds that the time spent of [229.2 hours minus the 20.4 hour reduction discussed above equals] 208.8 hours on the detailed time sheet (attached as Exhibit B to William L. Buss Declaration filed 12/14/2023) was reasonable and necessary in connection with the anti-SLAPP motion, including the initial appeal.

The court finds that the hourly rate of $595 requested by Nguyen's counsel was reasonable for similar work in Santa Clara County based on the experience, skill and reputation of the attorneys' requesting fees and the difficulty and complexity of the litigation to which that skill was applied.

However, in balancing the two competing public policies discussed in *Mann, supra*, 139 Cal.App.4th 328, 244-345, the court concludes Nguyen should not be entitled to obtain *as a matter of right* her entire attorney fees incurred on successful and unsuccessful claims merely because the attorney work on those claims was overlapping.

Instead, the court first determined the lodestar amount for the hours expended on the successful claims, and, since the work on the successful and unsuccessful causes of action was overlapping, the court then considered Nguyen's relative success on the motion in achieving her objective and finds that 15 percent reduction (of the 208.8 hours) is appropriate. [208.8 x .15 equals 31.3 hours.] [208.8 minus 31.3 equals 177.5 hours.]

Accordingly, the court awarded Nguyen her attorneys' fees of 177.5 hours times $595 per hour equals $105,612.50.

The court also awarded Nguyen her costs requested in the amount of 1,566.40.

The court disagrees with Plaintiff's argument that she is not entitled to the costs of filing the first appeal because the court of appeal ordered each side to bear their own costs. The method of awarding costs on appeal is different from awarding costs as the prevailing party under CCP section 425.16(c).

The court will prepare the order.

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