

1. **23CV01364 Dickson, Amber Bowen et al. v. Amber Grove Place, LLC et al.**

*EVENT: Case Management Conference*

The Court will conduct a hearing and hear from counsel re: status of settlement.

2. **23CV01923 Greenberg, Stuart et al v. Jacques, Michael et al**

*EVENT: Plaintiff's Demurrer and Motion to Strike Portions of Defendants Michal Jacques' and Alpha Omega Services Inc.'s Cross-Complaint and First Amended Cross Complaint (Continued from 5/27/26)*

**DEMURRER**

*Was Michael Jacques Required to Obtain Leave of Court to File the Cross Complaint?*

CCP 428.50. Time for filing cross-complaint; Leave of court to file cross-complaint

(a) A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint.

(b) Any other cross-complaint may be filed at any time before the court has set a date for trial.

(c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action.

Preliminarily, neither side has cited a case, nor has the Court found a case addressing whether leave to file a cross complaint is required when the underlying Complaint (or in this instance First Amended Complaint) has been amended but is unchanged as it pertains to the cross-complainant. With that in mind, the Court finds leave of court was not required. The plain language of the statute allows the filing of a cross-complaint without leave under subdivision (a) if it is filed contemporaneously with the answer. Thus, even if the Second Amended Complaint did not alter the allegations or legal theories with

respect to Michael Jacques, it essentially opened the door to the filing of a cross complaint in conjunction with an answer to the Second Amended Complaint.

### *Cause of Action No. 1 – Assault and Battery*

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Per CCP 335.1, the limitations period for assault and battery is two years. The alleged incident occurred in 2022. Thus, on the face of the pleading the cause of action is time barred considering Michael Jacques' cross complaint was filed on February 3, 2026.

A cross-complaint may relate back to the filing of the complaint for statute of limitations purposes if it arises out of the same transaction or occurrence. (*See Sidney v. Superior Court* (1988) 198 Cal.App.3d 710, 714) The Court is not persuaded that the assault and battery allegations arise out of the same transaction and occurrence as Mr. Greenberg's underlying pleadings.

Mr. Greenberg's allegations and theories are contractually based, whereas the cause of action for assault and battery concerns personal injury type harm. Because this cause of action does not arise out of the same transaction and occurrence with respect to the Complaint and First Amended Complaint, it does not relate back to those filings. Consequently, the cause of action is untimely.

### *Cause of Action No. 2 – Violation of Finance Code 22009, et seq.*

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

There is no private right of action for violation of the finance code. (*See Lagrisola v. North American Financial Corp.* (2023) 96 Cal.App.5th 1178, 1196)

### *Cause of Action No. 3 - Breach of Contract*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

With respect to the breach element, the pleading must specifically plead breach of agreed upon contractual provision. (*See Archer v. Coinbase, Inc.* (2020) 53 Cal.App.5th 266, 272 citing *Levy v. State Farm Mutual Automobile Inc. Co.* (2007) 150 Cal.App.4th 1,5) The First Amended Cross Complaint does not identify the specific contractual provision preventing Greenberg from "changing his mind" and setting up an LLC. Nor does the pleading specifically allege any other breaches with corresponding contractual provisions.

#### *Cause of Action No. 4 – Trade Libel*

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Mr. Greenberg challenges this cause of action on (3) grounds: statute of limitations, failure to allege sufficient facts, and litigation privilege.

Regarding the statute of limitations, this again invokes the question of whether the claim arises out of the same transaction or occurrence as Mr. Greenberg's underlying complaint. The moving papers do not really explain why this cause of action does not arise from the same transaction and occurrence.

This cause of action alleges that Michael Jacques was prevented from performing his obligations under a 2022 settlement agreement between himself and Mr. Greenberg because of allegedly libelous statements made by Mr. Greenberg to business associates and property managers, as well as a UCC-1 filing.

In reviewing the initial Complaint and the FAC that was filed shortly thereafter, the pleadings identify the settlement agreement and alleged breaches of the settlement agreement. As a result, the Court finds the Trade Libel cause of action does arise from the initial pleadings in this case and therefore relates back to those filings. As a result, the cause of action is not time barred because the alleged conduct occurred in late 2022 early 2023, and this action was filed July 2023.

As to the challenge that the pleading does not allege sufficient facts, Mr. Greenberg's arguments are not sufficiently developed on this issue. While the Court understands the argument in a sense, the legal analysis falls short.

Nevertheless, the Court is persuaded that the litigation privilege bars this claim. The claim appears to be based on a letter from Mr. Greenberg's attorney informing the recipient of pending litigation and a UCC-1 filing. Thus, the gravamen of the letter qualifies as litigation related conduct.

Michael Jacques' claim appears to be premised on the theory that these communications disrupted his ability to sell AOIS assets. However, he cannot get around the fact that the underlying conduct was related to judicial proceedings and/or quasi-judicial proceedings. As a result, the demurrer is sustained without leave to amend.

#### *Cause of Action No. 5 – Breach of Fiduciary Duty*

The demurrer is OVERRULED.

Ostensibly Mr. Greenberg argues that because he was not a manager of the LLC during the period of time he allegedly violated this statute (2017-2022) he can only be liable under subdivision (d) of Corporations Code 17704.09, and that based on the language of subdivision (f), subdivision (d) does not impose fiduciary duties. Subdivision (a) states that fiduciary duties are set forth in subdivisions (b) and (c).

The Court disagrees with this interpretation. There is no dispute that subdivision (d) is the only subdivision in the statute applicable to non-managing members. Subdivision (d) states that members shall discharge “duties” ... “to” ... “other members”. Considering the statute is entitled “Fiduciary Duties” the Court struggles to see how the word “duties” under subdivision (d) would not implicate fiduciary duties.

Ultimately, whether subdivision (d) qualifies as a fiduciary duty or not, it clearly imposes a legal obligation on members. We ignore erroneous or confusing labels ... if the complaint pleads facts which would entitle the plaintiff to relief. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc* (2019) 38 Cal.App. 677, 695) The trial court is obligated to look past the form of a pleading to its substance. (*Id*)

*Cause of Action No. 6 – Intentional Infliction of Emotional Distress.*

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

The limitation period for IIED is 2 years, see *Wassmann v. South Orange County Community College Dist.* (2018) 24 Cal.App.5th 825, 853. Consistent with the assault/battery discussion, because this personal injury claim does not arise out of the same transaction or occurrence as the allegations made by Mr. Greenberg in the complaint and FAC, this cause of action does not relate back to the initial pleadings. As a result, the IIED cause of action is time barred.

*Cause of Action No. 7 – Cancellation of Instrument [Civ. Code 3412].*

The demurrer is OVERRULED.

Mr. Greenberg makes two challenges – that the cause of action is barred by the statute of limitations and fails to allege sufficient facts constituting a cause of action. As to the statute of limitations, the initial complaint appears to address the amended agreement, although it dates the agreement for 9/22/22, not 9/21/22. Because the Complaint implicates the agreement, the cause of action relates back to the Complaint and is therefore not time barred.

As to sufficiency of the allegations, the pleading at a minimum sufficiently alleges the amended agreement was the by product of duress. Reading the complaint as a whole and in context, the duress allegations appear to be tied to the alleged assault in 2022.

**MOTION TO STRIKE**

As to paragraph 6, the phrase “commercial lender” is stricken. Regarding paragraph 12, the word “libelous” is stricken. The motion is denied in all other respects.

To the extent leave to amend is granted, Michael Jacques shall amend within 20 days’ notice of this order. Mr. Greenberg shall prepare and submit the form of order.

**3-4. 24CV00887 Gibson, Casey v. Aristotle Custom Homes LLC et al.**

*EVENT: (1) Plaintiff Casey Gibson's Motion for Summary Judgment or, in the Alternative, Summary Adjudication Against Defendant Greg Garbolinsky*

*(2) Plaintiff Casey Gibson's Motion for Summary Judgment or, in the Alternative, Summary Adjudication Against Defendant*

Both motions for summary judgment are granted in their entirety.

Plaintiff's Request for Judicial Notice is GRANTED, which includes judicial notice of the admissions which were admitted as to both Defendants. Based on the admissions, the Court finds Plaintiff has met his initial burden of demonstrating no triable issue of fact on all essential elements and Plaintiff's alter ego theory.

It is well settled that judicial admissions are conclusive and eliminates the issue from the case. (*See The Travelers Indemnity Co. of Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 360) As a result, in addition to the motions being unopposed, Defendants cannot demonstrate a triable issue of fact based on the admissions.

The Court will sign the proposed orders, striking the references to contempt.

The Trial Readiness Conference scheduled for July 15, 2026 and the Court Trial scheduled for July 20, 2026 are both vacated. A status conference is set for August 5, 2026 at 10:30am for status of judgment.

**5. 25CV02804 Palacio, Alyssa v. Childers, Cheryl et al**

*EVENT: Defendants Home Living Skills, Incorporated and Cheryl Childer's Motion to Strike Portions of Plaintiff's Complaint*

*Meet and Confer*

Plaintiff's arguments re: meet and confer are noted, however, CCP 435.5(a)(4) prohibits the Court from denying a motion on meet and confer grounds.

### *Malice/Oppression*

Contrary to Defendants' position, the Complaint does allege ultimate facts from which malice and oppression may be inferred. Although the complaint uses the malice and oppression buzzwords, the Complaint alleges she was injured on the job, that she informed defendants of her injury the next day, and that she was terminated the day after. At the pleading stage we make all reasonable inferences in favor of Plaintiff, see *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713. Making all inferences in favor of Plaintiff, the inference is that based on the short period of time between when she notified Defendants of her injury and her termination, Defendants acted maliciously or with oppression.

### *Ratification*

Civ. Code 3294(b)

An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

[Emphasis Added]

*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 566-567:

Instead, we conclude the Legislature intended the term "managing agent" to include only those corporate employees who exercise substantial independent authority and judgment in their corporate decision making so that their decisions ultimately determine corporate policy. The scope of a corporate employee's discretion and authority under our test is therefore a question of fact for decision on a case-by-case basis.

Defendant first argues that the pleading does not sufficiently identify a "managing agent". Reading the complaint as a whole, the complaint includes allegations against Defendant Cheryl Childers, identified as "program coordinator". "Program coordinator" might fall under the definition of managing agent, or it might not. Making inferences in favor of Plaintiff, as we must at this stage, the program coordinator allegation is sufficient for pleading purposes.

*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 403

Less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' [citation]; '[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party ... .'

Defendant is in a superior position as to information concerning the program coordinator position and the scope of authority for that position. As a result, the Complaint sufficiently alleges a “managing agent.”

As to whether the Complaint sufficiently alleges facts demonstrating ratification, the Court finds that it does not. Although ratification may be established by circumstantial evidence (see *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 621) there are no facts from which ratification can be inferred. As a result, the motion is granted with leave to amend to allege facts demonstrating ratification.

#### *Defendant Cheryl Childers*

The punitive damages theory with respect to defendant Childers appears to parallel the theory as to Defendant Home Living Skills – her termination shortly after providing notice of a disability could lead to the inference of malicious or oppressive conduct. However, as defendants noted, personnel management actions such as termination do not qualify as harassment, see *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 80.

With respect to Defendant Childers, the pleading’s allegations of harassment are conclusory other than the allegation that she was improperly terminated, but as noted that does not establish harassment. Because harassment is the only legal theory with respect to Defendant Cheryl Childers, the punitive damages allegations necessarily fail. The motion is granted with leave to amend as to the punitive damages allegations regarding Defendant Cheryl Childers.

To the extent leave to amend is granted, Plaintiff shall amend within 20 days’ notice of this order. Defendants shall prepare the form of order within two weeks.

#### **6. 26CV02051 Intelifund, LLC v. CD**

##### *EVENT: Petition to transfer structured settlement payment rights*

The petition is continued to July 8, 2026 at 9:00am. Petitioner is directed to submit an unredacted Petition so that the Court can conduct a proper review no later than June 24, 2026.