

PROPOSED TENTATIVE

On August 20, 2023, plaintiffs Joe DiPadova and Kim DiPadova (plaintiffs) filed a complaint advancing causes of action for breach of contract, unjust enrichment, and declaratory relief against defendants Aaron Henle and Nichole Hanel (defendants). Briefly, plaintiffs contend they entered into a contract with defendants to start a short-term rental business involving real property located at 3680 Camino Arroyo, Santa Ynez (real property), which defendants owned and was leased to plaintiff; plaintiffs were required under the contract “to perform thousands of dollars of renovations and repairs” to the real property (i.e., which permitted two five-star rentals), which defendants promised to reimburse; defendant breached the agreement by reneging on their prior promises to compensate plaintiffs, by attempting to sell the property, and by giving plaintiffs a 60-day notice to vacate. Defendants answered on April 12, 2024, and filed a cross-complaint against plaintiffs.

On October 25, 2023, Aaron Hanel and Lorraine Hanel (the same parties as above) filed an unlawful detainer complaint against Joe DiPadova and Kim DiPadova, in *Hendel, et al. v. DiPadova, et al.*, Case No. 23CV04782. The DiPadovas answered on December 1, 2023. A notice of related case (relating Case No. 23CV04782 with the present case) was filed on November 9, 2023, and the cases were ordered related on December 4, 2023. On January 31, 2024, the parties stipulated that cross-defendants would vacate the real property, with the paying \$12,750 in attorney’s fees, and with all remaining issues to be consolidated and resolved in the present matter, Case No. 23CV03778. The court signed the order on January 31, 2024. The matters were formally consolidated in a minute order in Case No. 23CV03778 dated February 5, 2024, and in a formal order dated and signed on February 21, 2024.

On June 5, 2025, plaintiff JPMorgan Chase Bank, N.A., filed a limited complaint against Joseph DiPadova for breach of contract, based on breach of a cardmember agreement, and his failure to pay \$19,604.08 in damages. Joseph DiPadova filed an answer and a cross-complaint against Aaron Henal and Laurel Henel Franzblau, raising breach of contract, intentional interference with contractual relations, intentional interference with prospective economic advantage, and declaratory relief. A notice of related case with Case No. 23CV03778 was filed on August 18, 2025,, and an order relating the case was made on September 17, 2025. A CMC for this case is on calendar for today. Trial is currently set for the consolidated cases (Case No. 23CV03778) for July 2027.¹

¹ There are two motions on calendar in the future. On December 1, 2026, plaintiff has filed a “Notice of Motion and Motion to Admit and Consider the Supplemental Declaration of Sheila R. Lowe as Evidence in Support of Plaintiffs’ Omnibus Motion and Motion for Leave to File a First Amendment Complaint” On September 16, 2026, plaintiff filed a “Notice of Motion and Motion to Vacate the January 31, 2025 Stipulation and Order (‘Stip-1’) as Procured by Fraud Upon the Court” It is unclear what impact the court’s resolution today will have to the continuing viability of this motions. The parties could come prepared to discuss.

On calendar is plaintiffs' motion for leave to file a first amended complaint in Case No. 23CV03378, in line with this court's order, contained in minute order dated May 5, 2026, that "counsel for plaintiff to file motion for leave to file amended complaint and the proposed amended complaint." Plaintiffs have submitted what can only be described as a very lengthy three-part declaration from attorney Brandon Murphy, which includes a proposed first amended pleading. The latter increases the number of causes of action from the original complaint from 3 to 33 causes of action, naming an additional eleven (11) new defendants. It names as new parties Loretta Franzblau, Raymond Anthony Guerrero, Ursula Santana, the law firm of Rogers, Sheffield & Cambell, LLP, the Estate of David Grokenberger, R Scott Mullen, Scott Soulages, Grant, Konvalinka & Harrison, P.C., Yates & Weland, a Tennessee law firm; Tessa Creighton, and Jillyn M. O'Shaughnessy. The causes of action are for: 1 and 2)) RICO violations (18 U.S.C. § 1962(c) (two counts for enterprise and conspiracy); 3 and 4) fraudulent transfer in violation of Civil Code section 3439.01(a)(1) (two counts); 5) conspiracy to commit fraudulent transfer; 6) fraud (intentional misrepresentation); 7) fraudulent concealment; 8) fraud (promise without intent to perform); 9) negligent misrepresentation; 10 and 11) breach of the written contract (written lease and tax reimbursement); 12) breach of oral contract; 13) breach of the implied covenant of good faith and fair dealing; 14) conversion; 15) intentional infliction of emotional distress; 16) wrongful eviction; 17) violation of Civil Code section 1942.5; 18) violation of Civil Code section 1950.5; 20) constructive eviction (breach of the covenant of quiet enjoyment); 21) violation of the Civil Code section 52.1; 22) constructive trust; 23) accounting; 24) unjust enrichment/restitution; 25) UCL violation; 26) tortious inference with contractual relations; 27) tortious interference with prospective economic advantage; 28) quantum meruit; 29) invasion of privacy; 30) loss of consortium (Joseph Dipadova); 31) fraudulent concealment; 32) violation of Santa Barbara County Code, Chapter 44, involving county tenant protections (relocation assistance and notice); and 33) civil conspiracy. The first amended complaint has Exhibits A to W, and has ballooned to 330 pages. The original lawsuit advanced three (3) causes of action.

Brandon Murphy in parts 2 and 3 of his declaration explains the effect of the amendment and why the amendment is necessary and proper. According the Mr. Murphy, central to the new causes of action is a "fabricated" "eighteen page lease" that "was not known to Plaintiff when the original Complaint was filed"; the fabricated lease was not discovered until April 11, 2025. According to Mr. Murphy, he could not have made the request for amendment earlier because due diligence – and Code of Civil Procedure section 128.7. Further, counsel was constrained by plaintiffs' financial hardship in advancing the proposed first amended pleading.

Defendant Aaron Hanel has filed opposition to the request to file a first amended complaint, along with a declaration from Miguel A. Avila, which in turn includes a February 21,

2024 order signed by this court, counsel for Hanel, and plaintiffs' former counsel Mathew Nash.² Defendant initially argues that plaintiffs' motion for leave to file a first amended complaint violates an order signed by this court on February 21, 2024, in which former counsel was a party (Mr. Nash); Mr. Nash agreed and confirmed that "no other defendant will be named in their action for damages" Further, court's February 21, 2024 order not only consolidated the two actions at issue, but plaintiffs agreed at that time to file a first amended complaint "within twenty days of the entry of this order" No amended pleading was filed. Defendant contends that the relief sought at this time cannot be had as result of this order.

Second, defendant argues that the proposed first amended complaint fundamentally alters the nature of this lawsuit, which was prefaced by a long delay and in reality unexplained delay. According to defendant, plaintiffs acknowledge that they were in possession no later fall of 2024 the critical facts to advance the new causes of action involving claimed forged documents. Most significantly, it observes that the court has already schedule a trial for July 27, 2027, which as of this writing is less than 10 months away.

Finally, defendant insists that the proposed pleading would require defendant "to investigate and respond to eleven new defendants who have never appeared or participated in discovery, including the buyers . . ." The parties are new, and the lawsuit requires an entirely new scope of investigation. Opines defendant: "Defendant has spent more than two years and substantial sums defendant the claims in the original complaint. None of that work carries over to the claims Plaintiffs now propose, and then months is not enough time to do it again." It claims prejudice, as 10 months is simply not enough time to address the tenor and complexity of the new lawsuit.

Plaintiff filed a reply on September 22, 2026. Contemporaneous with the reply plaintiff submits a request for judicial notice (Exhibits A to D), and two new declarations – one from Joseph DiPadova and one from Kim DiPadova.

Preliminarily, the court will strike the new request for judicial notice and the two new declarations, both filed with the reply. The general rule of law and motion practice is that new evidence is not permitted with reply papers. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.) This includes a judicial notice request submitted with a reply. (*Lent v. California Costal Com.* (2021) 62 Cal.App.5th 812, 855 [denial of judicial notice is particularly appropriate when made with a reply brief to which opposing party has not had an opportunity to respond].) That information has not been considered by the court.

² Current counsel for plaintiffs is Brandon Murphy. Mr. Nash represented plaintiff up to November 4, 2025, at which time the court granted a request for an order relieving Mr. Nash and substituting in Mr. Murphy.

Amendments are to be liberally allowed, for case law reflects a preference for the resolution of litigation and the underlying conflicts on the merits. (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 342-343 see also *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487 [courts should apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial].) Of course, the liberal policy does not prevail when there is inexcusable delay and probable prejudice to the adverse party. (*Ibid.*) Case authority indicates that the court has discretion to deny leave to amend based on unreasonable delay alone under the appropriate circumstances. (See, e.g., *Doe v. Los Angeles County Dept. of Children & Family Services* (2019) 37 Cal.App.5th 675, 689; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 765 [“ ‘even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial”].) Prejudice is shown when the amendment opens up an entirely new field of inquiry without an adequate explanation as to why such a major change in point of attack had not been made long before trial. Other factors in the prejudice inquiry include the timing of the request (e.g., was it on the eve of trial?), the need for delay of trial (resulting in loss of critical evidence of the added costs of preparation), the impact on the adverse party in preparing for trial through adequate discovery, and whether there is a substantial change in the tenor and complexity of the lawsuit. (*Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435, 1448; *Magpoli, supra*, at pp. 487-488; see also *Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 544-545 [when there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend]; *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530 [if the motion to amend is not made with unwarranted delay, and there is no prejudice, it is error to refuse permission to amend where the refusal also results in party being deprived of the right to assert a meritorious cause of action]; see *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565 [even if there has been a delay in seeking leave to amend, it is an abuse of discretion to deny leave if the opposing party has not been prejudiced].)

With these standards in mind, the court is certainly willing to afford Mr. Murphy significant leeway in advancing the lawsuit as he sees fit, as he is now plaintiffs “captain of the ship” since November 4, 2025. The court is therefore not willing to hamstring Mr. Murphy’s efforts per se following the February 21, 2024 order signed by former counsel, Mr. Nash. That being said, the court is sympathetic to the claim that defendant may have been misled (albeit perhaps unintentionally). This fact, while not dispositive, does lurk in the background of the present inquiry. (See, e.g., *S.C. v. Doe I* (2025) 115 Cal.App.5th 365, 383.)

Given this liberality, the court is imbued with discretion to deny leave to amend when the amendment would be futile, i.e., where the causes of action in the amended pleading do not state a cause of action as a matter of law. (See, e.g., *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 828 [amendment was predicated on relitigating the final judgment and post-judgment orders based on intrinsic, rather than extrinsic fraud, making the claim legally untenable]; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230 [because the cause of action in the amended

pleading did not relate back to the filing of the original complaint, as it was based on a different incident, it was barred by one-year statute of limitations per Code Civ. Proc. § 340.6 as a matter of law]; see also *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 489 [leave to amend denied where there is no reasonable possibility that an amendment could cure the complaint's defect].) Generally, a trial court should not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend, for a demurrer or a motion to strike would be premature, and plaintiff should be afforded an opportunity to attack the validity of the amended pleading through all available means. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 790 [“we believe that the better course of action would have been to allow plaintiff to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceeding”].) That is, where the defect in any proposed amendment can potentially be cured by a future amendment, the preferable practice is to permit the amendment and allow the parties to test its legal sufficiency by demurrer or other appropriate motion. (*California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 281, disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11.) If this were the only concern, the court would be inclined to allow the first amended pleading, with directions to the parties too file appropriate pretrial challenges (e.g., demurrer, motion to strike, and even a motion for judgment on the pleadings), and let the chips fall where they may.

But this is not the only problem. Far from it.³ Viewed holistically, the fundamental scope of the first amended complaint leaves the court more than concerned about its impact on the scope and trajectory of this lawsuit, at least from impact of the initial complaint, with only 10 months to trial on July 27, 2027.⁴ The lawsuit to date (including the consolidated matter), along

³ For example, in the motion – and certainly in reply – plaintiffs insist that they have complied with Civil Code section 1714.10, which requires a court order that there is reasonable probability plaintiff will prevail in the action when a cause of action against an attorney for civil conspiracy is alleged. Subdivision (a) of the statute, however, is very clear – “The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making that determination . . .” (See, e.g., *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 815 [a plaintiff who desires to pursue such action to first commence a special proceeding by filing a verified petition naming the attorney as respondent, with the trial court order service on the attorney, who is then given an opportunity to appear and contest the petition; if the petition is granted, plaintiff is permitted to file the complaint in the main action].) While it is true that a complaint setting forth any exceptions in Civil Code section 1714, subdivision (c) need not follow the requirements of section 1714.10, subdivision (a), there is certainly no reason to assume that any putative defendant attorney would not be able to challenge the amended complaint by some appropriate pretrial mechanism (i.e., alleging a failure to comply with the statutory scheme as an example). (See, e.g., *Stueve v. Berger Kahn* (2013) 222 Cal.App.4th 327, 330 [contemplating a motion to strike and demurrer against an amended complaint claiming noncompliance with Code Civ. Proc., § 1714.20].) The point the court emphasizes here is this: the time frame necessary to accomplish and satisfy these statutory mandates amplifies the court's concerns about affording sufficient time to try this matter before the assigned trial date.

⁴ To put a finer point on this, generally a request to file an amended pleading 10 months before trial would be sufficient to cure any possible prejudice caused by the timing contemplated by an amended pleading. But this is not your ordinary request for an amendment. Given the fundamental changes proffered by plaintiff in the proposed first amended pleading – the fact that 11 new defendants from all over the country need to be served, who must be given a fair opportunity to offer pretrial challenges, along with the need for new and fulsome discovery, with 30 new causes of action -- the fact trial is in 10 month seems manifestly insufficient to bring the new lawsuit to trial,

with the corresponding discovery, has dictated the lawsuit to date. The new allegations, with the number of new parties as described in the proposed first amended pleading, do not simply cure incorrect allegations, and go far beyond adding one or two new causes of action. They are not a supplementation to, but a wholesale supplantation of, the original complaint. A new set of facts now animate the lawsuit, amounting to a wholesale new direction and trajectory; the court is left with the unshakeable impression (best described with the following hoary aphorism) that Mr. Murphy's eyes seem much larger than his stomach.

The real world and common sense undergird the court's concern. The lawsuit was filed on August 30, 2023, in a complaint in which plaintiff advanced three (3) causes of action against two named defendants involving the real property at issue (breach of contract, unjust enrichment, and declaratory relief, all involving acts that occurred on or before August 1, 2023). The proposed first amended pleading asks the court to add 30 new causes of action, involving eleven (11) new defendants (three of which are law firms, one of which currently represents defendants in this matter, and two of which are Tennessee law firms that represented defendants in their divorce proceedings, one involves the estate of a deceased attorney, one another involves former counsel to defendants, while two are Tennessee practitioners), based on events discovered allegedly on April 11, 2025 (among the electronic files produced by defendant's former counsel). The new thrust rests on fraud, perjury, and forgery, involving different primary rights than those alleged in the initial complaint. The court cannot ignore the obvious (or the white elephant in the room) -- there is absolutely no feasible way the 11 new defendants can be served, develop new discovery, advance all appropriate pretrial motions, before the July 27, 2027 trial date (or indeed, likely before the five year litigation time frame occurs for the original lawsuit before August 2028, although the later point is not dispositive to the court's ruling). The allegations contained in the first amended pleading overshadow, overtake, and simply dwarf the allegations contained in the original complaint. In terms utilized by the court in *Magpali v. Farmers Group, Inc.*, *supra*, 48 Cal.App.4th 471, when the proposed amendments open up an "entirely new field of inquiry," which changes the "tenor and complexity of the complaint" to now include activities and practices in an entire new area (both legally and geographically), denial of leave to amend is appropriate. That is the case here. In the court's view, there is no realistic way in which the lawsuit as proposed in the first amended complaint will be able to proceed timely trial by July 27, 2026, or anytime close to that date.⁵

Amendments may be allowed at any stage of the proceeding, including trial. However, if the proposed amendment opens up new fields of inquiry by changing the fundamental theory of the case, constituting a major change in the point of attack, and where there is prejudice to the

prejudicing the existing defendants. Simply put, while 10 months would ordinarily be sufficient time, the nature of the changes requested are so significant and unusual that a real world and common sense approach to the problem is required.

⁵ The court might feel differently if the plaintiffs advanced new causes of action against the original defendants only. But bringing into the lawsuit eleven (11) new defendants (many of whom reside out of state) fundamentally alters the nature of this lawsuit. The existing trajectory cannot accommodate this new direction.

court and/or the parties, it is not an abuse of discretion to deny leave to amend. The lawsuit is not about a breach of contract, but fraud. Put another way, plaintiffs allege after three years of litigation with only ten months before trial, an entirely new field of inquiry, involving entirely new defendants (more than 5 times the number of original defendants), requiring new investigations and new discovery in what can only be described as an unreasonable compressed time frame. There is palpable prejudice to the defendants and to the court if the court allows the first amended complaint to go forward within the extant litigation framework. While liberality is the standard, it is sufficiently commodious enough to include common sense and real world experience. Simply put, liberality is not abdication.

Nothing offered in plaintiffs' reply disabuses the court of its concerns. In fact, at no point in reply do plaintiffs address the court's fundamental problem – the ability to try this case within 10 months given the number of causes of action and (significantly) the number of new defendants at play. Although plaintiffs insist that the new causes of action relate to the same general set of facts as the original complaint, that is not really the case – the facts at issue seem to have arose after the lawsuit was filed. The court is not required to weigh the merits the claims in making this decision – what it is charged with is determining whether the parties are prejudiced by a fundamental reshaping/reconfiguring of the nature, tone, and tenor of the lawsuit. And they are. As noted above, plaintiffs' efforts supplant the original complaint – they do not supplement it. That is fatal to the present request under the circumstances (given the circumscribed time available).

Summary:

The court strikes the new evidence and new request for judicial notice filed with the reply.

The court denies the request to file a first amended complaint.

Plaintiffs are not left without a remedy. Because the new causes of action for the most part seem to involve new primary rights, and because as of this writing there appears no statute of limitations bar (based on the facial allegations in the proposed first amended pleading), plaintiff can file a new complaint advancing the new causes of actions, which would then trigger a new litigation trajectory (and a new five-year rule). Plaintiffs can then serve defendants new and old in a timely fashion. As for the specter of impermissible claim-splitting (i.e., old defendants subject to breach of contract based on a claim that it emanates from the same primary right now advanced in a new lawsuit), there is no finality as of this writing; accordingly, plaintiffs can ask the court to relate the two cases and then request the court to consolidate this case with any new action, with the latter case being designated the lead case.⁶ No meaningful

⁶ Claim preclusion bars a new lawsuit if the first case had (1) the same cause of action; (2) between the same parties, or parties in privity; and (3) a final judgment on the merits. The doctrine promotes judicial economy by preventing claim splitting of the same primary right (i.e., a plaintiff cannot split a cause of action between two lawsuits that derive from the same primary right). It requires all claims based on the same cause of action, which

prejudice inures to any party should this course of action be pursued, which seems the most desirable based on the limited and oppressive time frames at issue. The new consolidated case can be fast tracked for trial purposes if appropriate. The claims also can be bifurcated. Significantly, greater procedural flexibility inures to all if a newly filed complaint dictates the course of this litigation, rather than the original trajectory mandated by the original complaint filed on August 20, 2023 with the trial date of July 27, 2027.

The parties should come prepared to discuss the impact of the court's ruling today on the two pending motions (filed by plaintiff) (see fn. 1, *ante*), on calendar for December 1, 2026 and January 12, 2027, respectively. Does the court's ruling today obviate the need for the court to rule on them?

There is a CMC scheduled for today.

were or could have been raised, to be decided in a single suit. (See, e.g., *5th & LA v. Western Waterproofing Co., Inc.* (2023) 87 Cal.App.5th 781, 788.)