Parties/Attorneys:

Plaintiff	Gary Hauenstein Gwen Hauenstein	Law Offices of Benjamin Donel & Assoc Ben Donel, Esq. Neil C. Evans, Esq.
Defendants	Ara Baljian Le Phuque, LLC BMI Group	Law Offices of Saul Reiss Saul Reiss Fay Pugh

Tentative Ruling:

1. Motion to Set Aside Dismissal: For the reasons stated below, the court grants the motion to set aside the dismissal as to Gary Hauenstein. The court notes it never received a dismissal as to Gwen Hauenstein.
2. Motion: Amend: Plaintiffs are instructed to address whether the addition of a prayer for quiet title in this action is appropriate or necessary in light of the quiet title action in Case No. 25CV05465.
3. The court directs plaintiffs to file and serve a Notice of Related Case pursuant to California Rules of Court, rule 3.300.

The Complaint

Plaintiffs Gary Hauenstein and Gwen Hauenstein owned title to three (3) contiguous property parcels in Lompoc, each with its own separate boundaries and APNs: 099-330-004 (Parcel 1), 099-060-006 (Parcel 2) and 099-060-011(Parcel 3). Parcels 2 and 3 are 'landlocked' by the Parcel 1, where the Hauenstein's home was located. All three parcels are together commonly known as 3333 Avena Road, Lompoc, CA 93436, though each have separate boundaries, legal descriptions, and tax assessor designations.

According to the third amended complaint, in December 2015, plaintiffs' daughter, Karin, who held power of attorney, entered into a lease with David Agazaryan, Mike Agazaryan and Arman Karkotsyan for use of approximately fifteen (15) thousand square feet of Parcel 2, for a monthly rental of $10,000.00 for a commercial cannabis operation. They fell behind in rents due in an amount of approximately $110,000.00. In early 2017, plaintiffs declared the lease breached and terminated it based on rent default.

In June 2017, defendant Ara Baljian on behalf of defendant Le Phuque, LLC, invested in the commercial cannabis operation so it could pay past due rents (of

$110,000) and it also agreed to pay the delinquency of about $28,600 on the 1st Deed of Trust to Nationstar on Parcel One caused by the unpaid rents. The entire investment was to be $165,000, with the balance of the funds (about $26,400 but alleged to be $28,600) being distributed to plaintiffs to protect them against future rent or other lease violations and/or as an inducement to reinstate the lease. The balance of the funds was never distributed to plaintiffs.

Moreover, Baljian insisted that, to protect his interests, the arrears be structured as a "loan" to the plaintiffs in the amount of $168,500, which was secured by a Note and Deed of Trust between plaintiffs and Le Phuque, LLC. The deed of trust was recorded against all three parcels. He promised plaintiffs he would not enforce the deed of trust but then did so on December 26, 2019.

In addition, Baljian used his company, BMI Group Inc., to take over the lease. He promised that he would make infrastructure improvements to the property and secure permits from the County to grow commercial cannabis long-term, but he failed to do either. Finally, Baljian allowed a mechanic's lien to be placed on the property by Sunbelt Rentals, Inc., alleged to be a violation of the lease agreement.

The complaint was filed on October 27, 2020. The operative pleading is the third amended complaint, which was filed on October 31, 2022. It alleges the following causes of action: (1) breach of contract; and (2) fraud. Defendants answered on December 8, 2022.

<u>The Cross-Complaint</u>

On December 8, 2022, Le Phuque, LLC filed its cross-complaint, alleging simply that on or about June 22, 2017, the Hauensteins borrowed $168,500 from it, secured by a deed of trust against the property, to pay its arrearages with Nationstar. In December of 2019, Le Phuque declared the entire amount under the note due and owing and caused to be recorded a Notice of Default and Election to Sell Under Deed of Trust. On November 11, 2020, the Trustee's Deed Upon Sale was recorded and Le Phuque became the owner of all parcels.

It's cross-complaint alleges the following causes of action: (1) trespass; (2) ejectment; and (3) writ of possession. Plaintiffs answered on January 6, 2023.

<u>Trial Setting</u>

On March 11, 2025, with Mr. Hauenstein present, the court set the matter for trial on August 25, 2025. At the same time, plaintiffs' attorney, Lacy Taylor, was relieved as counsel.

Dismissals and Subsequent Actions

On May 12, 2025, plaintiff Gary Hauenstein, as a self-represented defendant, filed a dismissal of the complaint. No dismissal was filed by Gwen Hauenstein.

On or about June 11, 2025, Parcel 1 was sold pursuant to a trustee's sale by the Hauensteins' lender, which had a higher priority over the Le Phuque loan. The property was sold to Sunset Equity Partners, LLC, whose sole manager /member is Benjamin Donel, of Donel & Associates. He paid $728,066.12 for the property.

On August 19, 2025, attorney Neil Evans of Donel & Associates substituted in as counsel for Gary Hauenstein and for Gwen Hauenstein and filed an ex parte application to vacate the dismissal of the complaint. On that same date, defendant Le Phuque dismissed its cross-complaint.

On August 21, 1025, the court set the motion to vacate the dismissal for hearing on October 14, 2025, and subsequently continued it to November 25, 2025. In addition, the court vacated the August 25, 2025 trial.

On August 21, 2025, plaintiffs filed notices of pendency of action as to Parcels 2 and 3.

On September 3, 2025, Gary Hauenstein, again represented by Donel & Associates, commenced a new action by complaint for quiet title to Parcels 2 and 3 against Le Phuque LLC. (Case No. 25CV05465.) The new action was assigned to Judge Beebe of Dept. 4. *A Notice of Related Action pursuant to California Rules of Court 3.300 has not been filed.*

On September 9, 2025, in this action, the court granted an ex parte motion to compel the deposition of the Hauensteins.[1]

On September 29, 2025, plaintiffs in this action filed a motion to amend the third amended complaint.

On Calendar

1. Motion: Vacate Dismissal[2]
2. Motion: Amend Complaint

[1] Specifically, the court ordered "Defendant shall provide 35 written questions for each Plaintiff. Answers to the questions shall be provided in writing with verifications. The Court approves twenty days response time. The Court finds that electronic service is authorized. If the answers are not adequate, the Court may consider allowing additional questions." (September 9, 2025 MO.)

[2] As noted, there is no dismissal of the complaint as to Gwen Hauenstein. The court will thus consider this a motion to set aside the dismissal as to Gary Hauenstein only.

Oppositions and replies have been filed. All documents have been considered.

Request for Judicial Notice

Defendants ask the court to take judicial notice of 56 documents.

- Recorded documents: Exhibits 1-4, 7-13, 28, 38-40, 48
- Court documents from cases other than this case: Exhibits 5-6, 15-26, 53-56
- Search result for US Bankruptcy court: Exhibit 14
- Court documents from this case: 27, 29-37, 41-46, 49-52
- Document filed with the Secretary of State: Exhibit 47

Recorded documents: In *Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919, 924, fn. 1, the Cal. Supreme Court held the trial court properly took judicial notice of the recorded deed of trust, assignment of the deed of trust, substitution of trustee, notices of default and of trustee's sale, and trustee's deed upon sale. It stated: “The existence and facial contents of these recorded documents were properly noticed in the trial court under Evidence Code sections 452, subdivisions (c) and (h), and 453. . . . We therefore take notice of their existence and contents, though not of disputed or disputable facts stated therein. (See *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1102, 160 Cal.Rptr.3d 449.)” (*Id.*) The request for judicial notice of these documents is granted subject to the limitations described.

Court records: The court can judicially notice records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States pursuant to Evidence Code §452 subdivision (d). Judicial notice of other court records and files is limited to matters that are indisputably true. This generally means judicial notice is limited to the orders and judgments in the other court file, as distinguished from the contents of documents filed therein. (*Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 113; *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484; see *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 659-660—trial court properly took judicial notice of Taiwanese complaints but should not have used them to resolve factual dispute regarding whether the action was time-barred.) The court cannot accept as true the contents of pleadings or exhibits in the other action just because they are part of the court record or file. Such documents are inadmissible hearsay in the present case. (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.) The request for judicial notice of these documents is granted subject to the limitations described.

Document filed with Secretary of State: Documents prepared by private individuals and merely filed with the Secretary of State are not considered official acts and are not subject to judicial notice under Evidence Code § 452(c). For example, in *People v. Thacker* (1985) 175 Cal.App.3d 594, 597 the court held that materials prepared by private parties and filed with state agencies could not be judicially noticed because they did not meet the criteria of an official act. The request for judicial notice of these documents is denied.

<u>Motion: Vacate Dismissal</u>

Code of Civil Procedure section 473, subdivision (b) provides in part: “The court may, upon any terms as may be just, relieve a party [of] his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” This remedial statute is to be liberally construed. (*H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.) A “mistake” justifying relief may be either a mistake of fact or a mistake of law. “A mistake of fact exists when a person understands the facts to be other than they are; ... (*Id.*) Mr. Hauenstein contends there has been a mistaken belief that a settlement had been reached.

According to Mr. Hauenstein, “I contacted Ara Baljian by telephone in late April, 2025, to discuss a resolution of this Lawsuit. During this telephone conversation, Ara Baljian also expressed he was struggling with health issues and proposed that we would receive title back to all of the Real Property, upon payment of his attorneys' fees, as part of a complete resolution of this litigation, including dismissal of our Third Amended Complaint and dismissal of the Cross-Complaint on a simultaneous basis. During this telephone conversation, Ara Baljian told me the estimated amount of his attorneys' fees were around $250,000, but he would get back to me with the correct amount. That never happened.” (Hauenstein Decl., ¶ 4.) Ara Baljian requested us to sign a Request For Dismissal of our Lawsuit which was to be filed as part of this complete settlement. We complied with this request as part of the process of completing a settlement and for no other purpose. We did not intend to file a Dismissal of our Lawsuit without a complete settlement.” (*Id.,* ¶ 5.) “During subsequent conversations, Mr. Baljian kept increasing the amount of money we would have to pay to settle the case to the point that we could not consummate a settlement.” (*Id.,* ¶ 6.) In other words, Mr. Hauenstein suggests the dismissal was to be filed *after* the parties reached an agreement on the fees, and the property reconveyed to the Hauensteins.

Mr. Baljian states that Mr. Hauenstein’s call came after his attorney set the depositions of the Hauensteins for May 12, and 13, 2025; that Mr. Hauenstein requested that he provide him and his wife with the requisite documents to sign to be submitted to the court to dismiss Hauensteins’ claims and stated in sum and substance that “he wanted to dismiss the complaint in this case and just wanted peace in his life”; that Mrs. Hauenstein confirmed her agreement with cancelling the lawsuit; and that there was no discussion relating to the conveyance of title to the property from Le Phuque to Hauensteins as a condition of filing the request for dismissal and ending Hauensteins' claims. (Baljian Decl., ¶¶ 21-25.)

In support of this claim, defendants point out that on July 4, 2025, plaintiffs' son, John Hauenstein, in response to a request to meet and confer on the cross-complaint, wrote: "We received [sic] some requests from your law firm yesterday about the case. Has the dismissal not been processed by the county yet? Let us know if there is anything we need to do." (*Id.* at ¶ 31, Exh. F.) In addition, on August 7, 2025, John Hauenstein wrote to Mr. Baljian in part as follows: "In addition, I know that counter lawsuit is still active that will be going to court this month against my parents. I'm hoping [sic] you see the benefit in dropping this lawsuit." (*Id.* at ¶ 33, Exh. G.) Defendants argue that since this correspondence does not protest the filing of the requests for dismissal or argue that the dismissals were filed prematurely, it confirms their understanding that the Hauensteins simply intended to dismiss the action, unassociated with any settlement.

But on July 2, 2025, John Hauenstein wrote: "Are you still open to transferring the parcels to my parents with associated liens for your debts *as we have discussed in the past*?" (Baljian Decl., Exh. H [emphasis added].) This is evidence that, at least to John's understanding as of July 2, 2025, such discussions did occur, as opposed to Mr. Baljian's assertion to the contrary.[3]

In any event, while any implication of John's understanding from these emails <u>*may*</u> be indicative of Gary and Gwen's understanding of the dismissal, it is not dispositive. The better evidence is the declaration from Gary himself.

Moreover, defendants' counsel concedes that "[p]ursuant to Mr. Baljian's instructions, my office prepared request for dismissal of the complaint on behalf of Hauensteins and forwarded the same to Mr. Baljian. [¶] Mr. Baljian returned the requests for dismissal signed by Hauensteins and notarized to my office for efiling with the Court. [¶] My office efiled the request for dismissal with the Court in the form insisted upon by the Court and Hauensteins' complaint was dismissed on May 12, 2025." (Reiss Decl., ¶¶ 10-12.)

Given the uncertain state of this record, including the fact that there is no written documentation of the agreed upon settlement, that defendant, rather than plaintiff, filed the dismissal (an oddity to say the least), and that the complaint as to Gwen Hauenstein was never dismissed (meaning this lawsuit is going forward), the court grants the motion to set aside the dismissal as to Gary Hauenstein.[4]

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[3] Mr. Baljian also submits evidence that in his reply email dated July 5, 2025, he stated: "Regarding the title, I never spoke of transferring it." (Baljian Decl., ¶ 44, Exh. I.) This does not undermine what John's understanding may have been, or more importantly, Gary or Gwen's understanding may have been prior to the reply email.

[4] The court rejects defendants' argument that the motion was not timely. The dismissal was filed on May 12, 2025. The ex parte request to set aside was filed on August 18, 2025, just three months after it was filed. There is no reason to find this delay dilatory. The court likewise rejects the argument that the "Hauensteins are never going to

Motion: Amend Complaint

Plaintiffs seek to amend the third amended complaint by adding a prayer "for Quiet Title or Title to the following real property: commonly known as 3333 Avena Road, Lompoc, CA, APN 099-330-004, and adjacent parcels APN 099-060-006 and APN 099-060-011 ("the Real Property")." It is unclear why or how another action for quiet title is appropriate under these circumstances. As noted above, Case No. 25CV0546 seeks an order quieting title to the property. Plaintiffs are directed to be prepared to address this issue at the hearing.

Notice of Related Case

The court directs plaintiffs to file and serve a Notice of Related Case pursuant to California Rules of Court, rule 3.300.

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get back title to the property" and that this motion is therefore moot. The court has been presented with pages upon pages of title documents for judicial notice and declines to decide the import of these documents in the context of this motion.