PROPOSED TENTATIVE

On September 29, 2024, plaintiff Ms. Lady J, Inc. (plaintiff or Lady J) filed a complaint against defendants Thomas S. Cullen and Shelia C. Cullen, Trustees of the Cullen Living Trust Dated July 15, 2015 (defendants or Cullens) for breach of contract and declaratory relief. According to the operative pleading, the dispute involves real property known as Parcel 129, in Hollister Ranch, Gaviota.[1] Defendants reside on the real property. According to the operative pleading, "there are currently two co-owners of the [real property], Lady J and the Cullens, with each of the co-owners' rights governed by a written co-tenancy agreement that has been modified over the years, most currently October 19, 2011. Lady J owns a "1/3 fractional interest in the [real property] and the Cullens own a 2/3 fractional interest in the [real property . . . ." According to plaintiff, a portion of the real property was designated in the co-tenancy agreement as the "Christmas Tree Area," which was designated as an agricultural only. "Within the past four years, the Cullens breached the written Co-Tenancy agreement by unilaterally constructing a solar power electrical system within the Christmas Tree Area without" plaintiff's consent. Plaintiff has attached the written co-tenancy agreement, which was originally consummated in 1992, as well as the March 30, 1994 "First Modification to Co-Tenancy Agreement'; the "Second Modification to Co-Tenancy Agreement" dated August 22, 1996; the August 3, 1999, "Third Modification to Co-Tenancy Agreement"; the "Agreement for Purchase of Real Estate" and Promissory Note Secured by Deed of Trust,"; and the October 19, 2011 "Fourth Modification to Co-Tenancy Agreement." The parties in this lawsuit are the named signatories in the Fourth Modification to the Co-Tenancy Agreement; all other agreements involve ed the parties predecessors in interest. Defendants answered on December 12, 2023, raising, as relevant for our purposes, a statute of limitations and laches affirmative defense.

On October 2, 2024, defendants filed a motion for summary judgment, or in the alternative, a motion for summary adjudication. According to defendants, even assuming there was a breach of the co-tenancy agreement by installation of solar panels in the Christmas Tree Area, the violation occurred in July or August of 2019, more than four years before the lawsuit was filed on September 29, 2024, and thus the action is barred by the four-year statute of limitations for breach of contract provided for in Code of Civil Procedure section 337, subdivision (a). This four-year statute of limitations period, according to defendants, applies equally well to the declaratory relief cause of action, as the latter cause of action is predicated on same asserted breach of contract. Defendant also claims the second cause of action should be summarily adjudicated based on laches. Plaintiff has filed opposition. Defendant filed a reply on January 15, 2024. All briefing has been reviewed.

A) Plaintiff's Evidentiary Objections

[1] There is no claim that venue in the North County is inappropriate. (See, e.g., Santa Barbara County Superior Court Local Rules 201, 202, and 203.)

The court overrules all 21 evidentiary objections advanced by plaintiff, for the evidence objected to is ultimately irrelevant in resolving the summary judgment and summary adjudication motions on the merits, as detailed below. (See, e.g., *Reid v. Google* (2010) 50 Cal.4th 512, 532-533 [at the summary judgment hearing, the parties, with the trial court's encouragement, should specify the evidentiary objections they consider important, so the court can focus its rulings on the evidentiary matters that are critical in resolving the summary judgment motion].)

C) ***Defendant's New Reply Declaration and New Evidence***

Defendants, with their reply, have submitted a new declaration from attorney James Sweeney, which contains new exhibit evidence (email exchanges between Ms. McCann and Ms. Parish on November 16, 2018, maps and serial photos of Parcel 129, a JAMs arbitration claim by plaintiff dated September 20, 2021, and a JAMS arbitration counter claim by one James Hudgens, Trustee, dated October 22, 2021.) Defendant makes no effort in its reply to explain why the late filed evidence is appropriate, and thus, why it should be considered by this court. In any event, the law is settled: "A trial court has discretion to consider new evidence in reply papers supporting a summary judgment motion *as long as the opposing party has notice and an opportunity to respond*. [Citation.] Evidence which is used to fill gaps in the original evidence created by the opposition is particularly appropriate to consider in a reply." (*Los Angeles Unified School Dist. v. Torres Construction Corp.* (2020) 57 Cal.App.5th 480, 499, italics added.) As plaintiff has not had an opportunity to respond to the new evidence, it will not be considered by this court.

B) Summary Judgment Based on Statute of Limitations Bar

The court does not need to explore what factual issues are disputed – and which factual issues are undisputed – for purposes of determining whether the breach of contract and declaratory relief causes of action are barred by the four-year statute of limitations per Code of Civil Procedure 337, subdivision (a), as defendant contends in support of its summary judgment motion. The following propositions frame the inquiry, are actually undisputed, and in the end are dispositive of the questions presented:

- Plaintiff filed its lawsuit on September 29, 2023.
- Defendants constructed the solar panels in the Christmas Tree Area during May and July 2019, with the installation project completed on August 9, 2019. According to defendants, therefore, plaintiff had four years from these dates to file the complaint, which it did not do.
- Defendant clearly relies on the four-year statute of limitations period within the meaning of Code of Civil Procedure section 337, subdivision (a) as the relevant period for both

the breach of contract and declaratory relief causes of action. The court will assume this is true for purposes of this order (i.e., as defendant urges).[2]

- Even if the court assumes Ms. Parish, on behalf of plaintiff, was placed on adequate notice of the construction of the solar panels in the Construction Tree Area as early as May 20, 2019 (something she vigorously disputes, claiming that while she was aware in theory of the construction, she was unaware of the solar panels would be constructed in this area), the lawsuit nevertheless was timely filed as a result of Emergency Rule 9, adopted by the Judicial Council in response to COVID-19 pandemic.
- Emergency Rule 9 provided as following. "Notwithstanding any other law, the statutes of limitations and response for civil causes of action *that exceed 180 days* are tolled from April 6, 2020, until October 1, 2020." (Italics added; see *People v. Financial Casualty & Surety* (2021) 73 Cal.App.5th 33, 39.) An Advisory Committee Comment to Emergency Rule 9 stated it was "intended to apply broadly to toll any statute of limitations . . . ." "The plainly intended meaning of Emergency Rule 9 is that statutes of limitation and response for pleadings commencing civil causes of action . . . are temporarily tolled." " 'A tolling provision suspends the running of a limitations period. In other words, 'the limitations period stops running during the tolling event, and begins to run again only when the tolling event has concluded. As a consequence, the tolling interval, no matter when it took place, is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling event previously occurred.'" (*Committee for Sound Water & Land Development v. City of Seaside* (2022) 79 Cal.App.5th 389, 403; see also *Roe v. Roe* (2023) 98 Cal.App.5th 965, 973 [the statute of limitations period was tolled for 178 days pursuant to Emergency Rule 9, meaning the statute of limitations deadline was extended three years and 178 days from accrual].) The impact of Emergency Rule 9 thus seems evident – it extended the deadline for plaintiff to commence an action by 178 days after the four-year statute of limitations period would otherwise have expired.
- This means in the present context that between April 6, 2020, and October 1, 2020, the four-year statute of limitations (which clearly exceeds 180 days) was tolled. This in turn means that plaintiff had 178 days and four years after May 20, 2019 (the date plaintiff arguably learned of the solar panel construction, and which is a date most favorable to defendant in the calculation), meaning plaintiff had until November 15, 2023, to file the present action. Plaintiff timely filed the lawsuit on September 29, 2023. No matter how viewed, there is no statute of limitations bar as a result of the 178-day tolling period authorized by Emergency Rule 9. Summary judgment as to both causes of action for breach of contract and declaratory relief based in the statute of limitations bar is therefore inappropriate, and the motion for summary judgment is denied.
- Nothing in defendant's reply changes this analysis. Defendant argues that the Emergency Rule 9 "should not survive beyond" the sunset date of June 22, 2022. But that is not

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[2] Defendant makes some vague reference in its Memorandum of Points and Authorities to Code of Civil Procedure section 338, subdivision (b), which provides for a three-year statute of limitations for an action for trespass or injury to real property. Plaintiff makes no reference to trespass or injury to real property as part of the first cause of action; the first cause of action instead is based *exclusively* on breach of contract (breach of the Co-Tenancy Agreement), which is governed by the four-year statute of limitations contained Code of Civil Procedure section 337, subdivision (a). Defendants' reference to Code of Civil Procedure section 338 is perfunctory and unsupported by any legal analysis. As it appears the reference is simple makeweight, and not of any substance, no further mention of it will be made.

how appellate courts have interpreted the Emergency Rules, as noted above. There are relevant cases exploring how Emergency Rule 9 works. Notably, the comments made in *Committee for Sound Water & Land Development, supra,* 79 Cal.App.5th 389, 403, cited above, appear particularly apt – that is, no matter when the tolling occurs, the tolled interval "is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling event previously occurred," citing *Lantzy v. Centex Homes* (2003) 31 Cal.App.4th 363, 370-371. Tellingly, *Committee for Sound Water & Land Development* concluded this general methodology applied to Emergency Rule 9, and itself tacked the tolling period to the end of limitations period in determining the issue. (*Id.* at p. 403.) This should not be surprising, as appellate courts have concluded that the plainly intended meaning of Emergency Rule 9 is that statues of limitations are temporarily tolled. (*People, supra*, 73 Cal.App.5th at p. 42.) There is no reason to treat the tolling provision at issue any differently than any other tolling provision.[3]

[3] Defendants in reply cite to *Barron v. Santa Clara County Valley Transp. Auth*. (2023) 97 Cal.App.5th 1115, and *Ables v. Ghaazale Bros. Inc*. (2022) 74 Cal.App.5th 823 to support their claim that Emergency Rule 9 is inapplicable. Neither case is apposite. *Barron* was interpreting language in Emergency Rule 10(a), which provided that notwithstanding any other law, "for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for total time of five years and six months." (*Id.* at p. 1123.) The same was true in *Ables*. (*Id.* at p. 825.) The rule remained in effect until June 10, 2022. (*Barron, supra*, at p. 1123.) Nothing in *this* case implicates Emergency Rule 10(a).

Perhaps more to the point, neither case supports defendants' claim that the tolling period contemplated in this context should be treated like a court holiday, or that the sunset provision of June 10, 2022, means the import of the Emergency Rules do not apply after that date. Both appellate courts did not apply the rules with such limitations in mind; they simply tacked the six-month period extension contemplated by Emergency Rule 10(a) to the end of the five-year period in which the lawsuit had to be brought to trial. In *Barron,* for example, the appellate court found the trial court erred in dismissing the lawsuit – for the lawsuit was filed on January 31, 2017, implicating Emergency Rule 10(a), meaning plaintiff had until July 31, 2022, to bring the action to trial (i.e., after the date of the sunset provision). (*Barron, supra*, at p 1125.) In *Ables*, the appellate court simply tacked onto the end of the five year period the six months contemplated by Emergency Rule 10(a), and found that the trial court properly dismissed the lawsuit because plaintiff did not bring the action to trial five years, *seven* months after filing. (*Ables, supra,* at p. 825.) If anything, these two cases support the proposition that a trial court should tack the 178-day tolling period onto the end of the normally expired statute of limitations period to determine the filing period.

One final point should be made. Defendants in reply cite to *Ables* for the proposition that a court cannot elevate a Judicial Council rule over an applicable statute. In *Ables,* plaintiff argued that Emergency Rule 10(a), which added six months to the five years during which the action must come to trial, also entitled her to an ***additional*** six months contemplated by Code of Civil Procedure section 583.350. The appellate court rejected the argument, concluding that because Emergency Rule 10(a) was not a statute, it could not trigger the ***extra-six months*** provided in Code of Civil Procedure section 583.350. (*Ables, supra*, at p. 828.) At no time did the *Ables* court state that Emergency Rule 10(a) was invalid. In fact, the *Ables* court acknowledged the validity of Emergency Rule 10(a), which itself extended the five-year rule for six months even after the expiration of the sunset provision. Nothing in *Ables* suggests Emergency Rule 9 is unenforceable simply because it is Judicial Council rule.

C) <u>Summary Adjudication of Declaratory Relief Cause of Acton Based on Laches</u>

This leaves defendant's second argument offered in support of summary adjudication to the declaratory relief (second) cause of action – defendant contends there are no disputed issues of material fact and the declaratory relief cause of action is barred under the doctrine of laches.

a) Legal Background

" 'The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.' " (*Johnson v. City of Loma Linda, supra,* 24 Cal.4th at p. 68, quoting *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359; see *Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1418.) "Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue." (*Miller v. Eisenhower Medical Center, supra,* 27 Cal.3d at p. 624, citing *Conti v. Board of Civil Service Commissioners, supra,* 1 Cal.3d at p. 361; see, *Miller v. Eisenhower Medical Center, supra,* 27 Cal.3d at pp. 625, 626 [finding no evidence of prejudice and thus no support for the trial court's finding of laches].) The defense of laches is confined to equitable actions; in legal actions, delay and prejudice do not amount to a bar while the statute of limitations has not yet run. (3 Witkin, Cal. Procedure (6th ed. 2024), Pleading, § 489 [Laches in Equitable Actions.].)

"Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances, and in the absence of manifest injustice or a lack of substantial support in the evidence its determination will be sustained. [Citations.]" (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) And it is true that a declaratory relief cause of action can be subject to the laches. (3 Witkin, *supra,* at § 874.) Nevertheless, the laches defense is unavailable in an action at law for damages (such as breach of contract) even though combined with the cumulative remedy of the declaratory relief. (*Wells Fargo Bank v. Bank of America* (1995) 32 Cal.App.4th 424, 429.) On this last point, it has been observed that declaratory relief is equitable, and whether laches is available in declaratory relief proceeding thus depends upon the nature of the underlying claim. (*Wells Fargo Bank, supra,* at p. 429.) For example, in *Mandracio v. Bartenders Union, Local 41* (1953) 41 Cal.2d 81, 85, our high court reversed a finding of laches in an action formulated as declaratory relief but which really amounted to an action for damages. In *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, our high court reversed a finding of laches because the doctrine was unavailable as defense to cause so faction at law seeking money judgments, even whether joined in claims in equity. (*Wells Fargo Bank, supra,* at p. 439.)

b) Merits

The court finds summary adjudication of the declaratory relief cause of action based on laches to be inappropriate, as laches under the circumstances is unavailable as a defense. The law

is settled – courts determine whether laches is available in a declaratory relief proceeding by determining the nature of the underlying claim (i.e., whether in reality it amounts to an action for damages). In this case, while plaintiff alleges two causes, both in fact are predicated on claims for money damages. The first cause of action is for breach of contract, and that cause of action is clearly an action at law. It speaks for itself. The second cause of action, seeking declaratory relief, is also a dispute regarding money. Plaintiff makes no bones about this in paragraphs 22 and 23 of the operative pleading, asking the court in the declaratory relief cause of action to remove the construction of improvements, to restore the Christmas Tree Area to its original state, ***and*** to "determine that defendants ***are liable for damages*** suffered by plaintiff as result of the solar electrical system construction." (Emphasis added.) In this regard it mirrors and tracks the first cause of action for breach of contract.

This was the precise situation confronted by the court in *Wells Fargo Bank v. Bank of America, supra*, 32 Cal.App.4th 424. The first cause of action was a request for damages and thus was an action at law, as is the case here; further, while the second cause of action was styled declaratory relief, according to the appellate court it was "essentially also a dispute regarding money." (*Id*. at p. 439.) The *Wells Fargo Bank* appellate court determined that in this situation the declaratory relief cause of action was not subject to laches, for both claims essentially involved actions at law. (*Id*. at p. 439; also *Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 362 [trial court properly declined to apply laches to a declaratory relief cause of action when the underlying claim advanced by plaintiff is a claim that the City imposed an unlawful tax, for which plaintiff sought money damages].) Plaintiff here is essentially advancing two money damage causes of action. Accordingly, as was true in *Wells Fargo Bank*, the court *as a matter of law* cannot apply laches to bar the second cause of action for declaratory relief. (*Wells Fargo Bank, supra*, 32 Cal.App.4th at p. 439 [laches defense unavailable even though an action of law is combined with a declaratory relief cause of action if both are essentially predicated on money damages].) It follows that summary adjudication is as to the declaratory relief cause of action based on laches is inappropriate. Defendant (having cited *Wells Fargo Bank* in its motion), does not address the impact of *Wells Fargo Bank* and progeny on the issue in reply.

The court denies defendant motion for summary adjudication as to the second cause of action for declaratory relief under the authority of *Wells Fargo Bank* and progeny.

Summary:

The court denies defendants' summary judgment and summary adjudication motions as to both causes of action.