**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**IN AND FOR THE COUNTY OF SAN MATEO**

**Law and Motion Calendar**
**Judge: HONORABLE DON R. FRANCHI**
**Department 15**
**1050 Old Mission Road, South San Francisco**
**Courtroom K**

**Monday, March 10, 2025**

**IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:**

1. **EMAIL Dept15@Sanmateocourt.org BEFORE 4:00 P.M.** CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.

2. **YOU MUST CALL (650) 261-5115 BEFORE 4:00 P.M.** with the case name, number and the name of the party contesting.

**AND**

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

**Failure to do both items 1 or 2 and 3 will result in no oral presentation.**

**Appearances by Zoom are highly encouraged.**

Zoom Video/Computer Audio Information:

https://sanmateocourt.zoomgov.com/

**Meeting ID: 160 135 4419**
**Password: 845111**

**Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC**

**Dial in:** +1 (669)-254-5252

***(Meeting ID and passwords are the same as above)***

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

| Case | Title / Nature of Case |
|---|---|

2:00
LINE:1

21-CIV-05152 DANILO CORTEZ FLORES VS. ESPOSTO'S, INC., ET AL.

DANILO CORTEZ FLORES, EDWIN AIWAZIAN
ESPOSTO'S, INC.

MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2698,ET SEQ.) SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, GENERAL RELEASE FEE, AND SETTLEMENT ADMINISTRATION COSTS BY PLAINTIFF DANILO CORTEZ FLORES

**TENTATIVE RULING:**

This matter is to be designated Complex.

This matter is continued to September 22, 2025 at 3:00 pm on the court's own motion.

2:00
LINE:2

22-CIV-05012 ROBERT B. MORRIS VS. CHARLYN HAMILTON, ET AL.

| | |
|---|---|
| ROBERT B. MORRIS | SHAUN CARBERRY |
| CHARLYN HAMILTON | DAVID M. HAMERSLOUGH |

MOTION FOR INTERLOCUTORY JUDGMENT OF PARTITION AND APPOINTMENT OF REFEREE BY PLAINTIFF/CROSS-DEFENDANT ROBERT B. MORRIS, TRUSTEE OF THE ROBERT B. MORRIS 2008 TRUST U/D/T DATED APRIL 24, 2008
**TENTATIVE RULING:**

Parties to appear.

Plaintiff to show cause why this matter should not be stayed pending filing and ruling on matter in Family Law action case Number Fam086848 Pursuant to the principal of Priority of Jurisdiction, espoused in Glade v. Glade, (1995) 38 Cal. App. 4th 1441.

[after family law court acquires jurisdiction to divide community property, no other department of a superior court may make an order adversely affecting that division and the civil trial court lacks jurisdiction to so act].)

(Glade v. Glade, (1995) 38 Cal. App. 4th 1441, 1456.)

2:00
LINE:3

23-CIV-06074 SUNG SIM PARK, ET AL. VS. LYNDA LAKE GARDENS HOMEOWNERS ASSOCIATION, INC., ET AL.

| | |
|---|---|
| SUNG SIM PARK | SEAN P. RILEY |
| LYNDA LAKE GARDENS HOMEOWNERS ASSOCIATION, INC. | HERSHINI GOPAL |

MOTION FOR ATTORNEY'S FEES BY DEFENDANTS CHARLES MICHAEL PERKINS, TARA M. PERKINS, DAVID J. LOCKHART, CARROLEE BARLOW, WILLIE O. ALFORD II, PEGGY M. ALFORD, BRYAN R. THOMAS, NGUYET QUE LUONG, KENNETH YAGEN, KATHLEEN YAGEN, PETER K. MORRIS, AND FREDDA L. MORRIS
**TENTATIVE RULING:**

The Motion for Attorney's Fees (the "Motion") brought by Defendants Charles Michael Perkins and Tara M. Perkins, individually and as trustees of the Perkins Family Trust under Trust Instrument Dated June 21, 2019, David J. Lockhart and Carrolee Barlow, individually and as husband and wife as joint tenants, Willie O. Alford II and Peggy M. Alford, individually and as trustees of the Alford Family Revocable Trust dated February 5, 2019, 1090 Lakeview LLC, a California Limited Liability Company, Bryan R. Thomas and Nguyet Que Luong, individually and as husband and wife as joint tenants, Kenneth Yagen and Kathleen Yagen, individually and as trustees of the Yagen Living Trust dated December 20, 2018, and Peter K. Morris and Fredda L. Morris, individually and as trustees of the 1999 Morris Family Trust U/D of Trust Dated March 26, 1999 (collectively, "Moving Defendants") is GRANTED with modification.

Initially, the Court notes that Moving Defendants have not provided the correct address for the hearing. Department 23 is located at the Northern Branch, Courtroom J, 1050 Mission Road, South San Francisco, CA 94080. (*See* Cal. Rules of Court, rule 3.1110 [the Notice "The first page of each paper must specify" the location of the hearing].)

The Civil Code provides that, "In an action to enforce the governing documents, the prevailing party *shall* be awarded reasonable attorney's fees and costs." (Civ. Code, § 5975, subd. (c) (emphasis added).) Code of Civil Procedure section 1033.5, subdivision (a)(10), further provides that attorney's fees authorized by contract, statute, or law are recoverable as costs pursuant to Code of Civil Procedure section 1032.

Under section 1032, "'Prevailing party' includes … a defendant in whose favor a dismissal is entered." (Code Civ. Proc., § 1032, subd. (a)(4).) Such a defendant is entitled to section 1032 costs whether the dismissal is with or without prejudice. (*Mon Chong Loong Trading Corp. v Superior Court* (2013) 218 Cal.App.4th 87, 93–94 ["While a lawsuit may be concluded by a voluntary dismissal, the price of such a dismissal is the payment of costs under section 1032."].)

*The First Cause of Action Seeks the Enforcement of Governing Documents.*

In the first cause of action, Plaintiffs explicitly sought "a judicial determination of the parties' respective rights and obligations SARD, the Lynda Lake Gardens Bylaws and other Lynda Lake Gardens *governing documents* and applicable municipal, state, and federal laws, statutes and ordinances *and enforcement thereof*." (Complaint, ¶ 64 (emphasis added).)

Plaintiffs claim that they had specified in the Complaint "that charging allegations as to Ernst and the HOA do not apply" to Moving Defendants (Opp., 11:25-26). However, the Complaint states that, "The *other* charging allegations are not now known to apply to them" (Complaint, ¶ 52 (emphasis added)), where "other" is not followed by a comma so that it appears to refer to additional *charging* allegations, and "them" includes Moving Defendants Charles Michael Perkins and Tara M. Perkins, individually and as trustees of the Perkins Family Trust under Trust Instrument Dated June 21, 2019 (there referred to as "Perkins Family Trust"), David J. Lockhart and Carrolee Barlow, individually and as husband and wife as joint tenants, (there referred to as "Lockhart/Barlow"), Willie O. Alford II and Peggy M. Alford, individually and as trustees of the Alford Family Revocable Trust dated February 5, 2019 (there referred to as "Alford Family Trust"), and 1090 Lakeview LLC, a California Limited Liability Company, but not Moving Defendants Bryan R. Thomas and Nguyet Que Luong, individually and as husband and wife as joint tenants, Kenneth Yagen and Kathleen Yagen, individually and as trustees of the Yagen Living Trust dated December 20, 2018, and Peter K. Morris and Fredda L. Morris, individually and as trustees of the 1999 Morris Family Trust U/D of Trust Dated March 26, 1999.

The next paragraph of the Complaint concerns the remaining six Moving Defendants, Bryan R. Thomas and Nguyet Que Luong, individually and as husband and wife as joint tenants, Kenneth Yagen and Kathleen Yagen, individually and as trustees of the Yagen Living Trust dated December 20, 2018, and Peter K. Morris and Fredda L. Morris, individually and as trustees of the 1999 Morris Family Trust U/D of Trust Dated March 26, 1999 (there referred to as "Thomas/Luong, Yagen Living Trust, …, Morris Family Trust"), but does not include language about the inapplicability of other charging allegations. *Id.*, ¶ 53.

Even if Plaintiffs had sought against Moving Defendants only a "declaration and decree that they are obligated to comply with all Lynda Lake Garden governing documents …" (Opp., 9:5-6), a decree of an obligation to comply with governing documents sounds in the enforcement of those documents. Moreover, Plaintiffs allege that all of the defendants are the agents of all of the other defendants, and therefore liable for all of the acts complained of in the Complaint. Complaint, ¶ 56.

*Moving Defendants Are Section 1032 Prevailing Parties.*

Plaintiffs asserted to the Court that, "An actual controversy as described herein has arisen and now exists between Plaintiffs and Defendants as to … matters stated herein pursuant to the governing documents" (Complaint, ¶ 62, in the first cause of action), but did not prevail on this point as to Moving Defendants on demurrer (Tentative Ruling Adopted and Becomes Order, July 1, 2024 ("As to all of the Moving Defendants, the Complaint fails to allege facts sufficient to support an actual controversy.")).

Without citing Code of Civil Procedure section 389, Plaintiffs also argued that Moving Defendants were indispensable parties. Complaint, ¶¶ 52-53. That the Moving Defendants were dismissed shows that Plaintiffs failed to succeed in these contentions. Moving Defendants are entitled to costs, including attorney's fees, as prevailing parties pursuant to section 1032. (Code Civ. Proc., § 1033.5, subd. (a)(10).)

*Fees Are Awarded According to Proof.*

Moving Defendants are entitled to attorney's fees. (Civ. Code, § 5975, subd. (c), & Code Civ. Proc., § 1032, subd. (a)(4).) However, while Moving Defendants' counsel's Declaration details the rates, hours, and tasks, the total amount for each billing entry (the rightmost column) has been omitted from the first eight pages of the billing detail provided. (Tabatabai Decl., pp. 21-28, in Exh. D.) Further, the actual fees can be shown, rather than estimated, relating to the instant Motion.

Court awards Costs in the amount of $6,043.52.

Unless parties stipulate to the actual fees incurred based upon the above tentative decision,

**Parties are ordered to appear** and Defendants' counsel is ordered to produce the first 8 pages of exhibit D with the column for Total included as well as the total billing for the Reply declaration.

If the tentative ruling is uncontested, and the amount of fees are stipulated to, no appearance is necessary and this order and the stipulation regarding fees shall become the order of the Court. Thereafter, counsel for Moving Defendants shall prepare for the

Court's signature a written order consistent with the Court's ruling, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
LINE:4

24-CIV-01812 ELI RABER, ET AL. VS. ELLIE POURTEIMOUR, ET AL.

| | |
|---|---|
| ELI RABER | MARK J. RICE |
| ELLIE POURTEIMOUR | CHARLES P. STONE |

DEMURRER TO PLAINTIFFS ELI RABER AND REBECCA RABER'S COMPLAINT BY DEFENDANT ELLIE POURTEIMOUR

**TENTATIVE RULING:**

According to the Complaint, Plaintiffs Eli and Rebecca Raber are the owners of the subject real property in San Bruno, CA. Defendant Or Baruch Dayan is a construction contractor dba Baracke dba Infinity Construction. The Complaint alleges that Defendant Habitat Renovations Inc. is the alter ego and fraudulent conveyor successor of Dayan, dba Infinity. Plaintiffs complain that Defendants abandoned the project, charged more than the contract price for the work, and unlawfully diverted payments, among other improper actions. Plaintiffs seek the return of $369,513.03 in funds based on these alleged wrongdoings. Defendant Ellie Pourteimour is Dayan's spouse, though the two are currently involved in a marriage dissolution action. Pourteimour is sued to the extent of her community property with Dayan.

Defendant Pourteimour demurs to the causes of action asserted against her, arguing that the Complaint does not allege that she committed any act of wrongdoing, but instead improperly seeks to hold her personally liable solely on the basis of the community property she may hold in common with her (ex-)husband and the primary alleged wrongdoer, Defendant Dayan.
On demurrer, the Court evaluates whether the complaint states facts sufficient to constitute a cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The allegations of the Complaint are accepted as true, no matter how improbable, unless contradicted by facts of which the court may take judicial notice. (*Friedland v. City of Long Beach* (1988) 62 Cal.App.4th 835, 842.)

Plaintiffs argue that because Pourteimour's community property may be used to satisfy any potential judgment rendered against

her (ex-)husband Or Dayan, it is also proper to name her as a defendant in the action itself and to allege causes of action for disgorgement, breach of written contract, and negligence against her personally. This is incorrect and is belied by the authorities upon which Plaintiffs themselves rely.

Plaintiffs point to *Robertson v. Willis* (1978) 77 Cal.App.3d 358 for support that community property is reachable. (*See also* Code Civ. Proc. § 695.020 [stating that community property held between spouses may be subject to the satisfaction and enforcement of a money judgment against one of the spouses].) That may be the case, but Plaintiffs are confusing two different procedures at two different stages of the action, with differing implications for Defendant Pourteimour: determining whether community property should be used to satisfy a judgment debt once a judgment has been *entered*, and pleading a spouse's liability solely based on the fact that her assets are commingled with her spouse's as community property. *Willis* explicitly states that "[t]he trial court correctly concluded that the community property of the parties, including that accumulated from [the wife's] earnings, is liable for payment of the promissory note executed by John in favor of the plaintiff. However, *insofar as the judgment is a personal judgment against [the wife], it is erroneous*." (*Willis*, supra, at 369 [emphasis added].) This clear instruction from the *Willis* court establishes that while community property may be properly reached to satisfy a judgment debt once that judgment has been adjudged and decreed against the wrongdoer, it is improper to attach personal liability to a spouse whose only connection to the proceedings are her community property assets. Plaintiffs further argue that they are following instructions set forth in *Willis* by pleading allegations against Pourteimour "to the extent of her interest in the community property" owned by her and Dayan. This is not what *Willis* states. Instead, *Willis* instructed that the *judgment*—not the pleadings—be modified to reflect that the wife's liability for the judgment be limited to the extent of her interest in the spousal community property. This is the opposite of what Plaintiffs attempt to do. Instead of seeking to attach liability for the breach of contract to the wife in *Willis*, the Court modified the judgment to make it clear that no liability for the acts themselves adhered to the wife, only liability for the satisfaction of the judgment debt.

In Willis the court noted that the community property including the interest of the wife is subject to execution. (1)Community property is available to satisfy a husband's debts to his creditors. (*Weinberg v. Weinberg* (1967) 67 Cal.2d 557 [63 Cal.Rptr. 13, 432 P.2d 709].) Whether the debts are incurred before or after marriage the community estate, including the interest of the wife, is subject to execution. (*Grolemund v. Cafferata* (1941) 17 Cal.2d 679 [111 P.2d 641].) Robertson v. Willis, 77 Cal. App. 3d 358, 362–63, 143 Cal. Rptr. 523 (Ct. App. 1978)

Here, there is no judgment debt yet decreed. The other cases upon which Plaintiffs rely also arose in the context of reaching assets *after* a judgment had been entered. (*See Lezine v. Sec. Pac. Financial* (1996) 14 Cal.4th 56.) Plaintiffs cite no authority for their novel and rather alarming proposition that a spouse may be held personally liable for torts they played no part in committing, or for breaching a contract to which they were not a party. Again, Plaintiffs seem to conflate the potential liability of the community estate with the potential liability of the spouse herself. This argument goes directly against Cal. Family Code § 1000, which states that "[a] married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist." (Cal. Family Code § 1000(a).) In other words, a spouse may not be held personally liable solely because they are the spouse of the wrongdoer or tortfeasor.

Plaintiffs fail to allege under their disgorgement cause of action that Pourteimour played any role in Infinity and Habitat's wrongdoing, which forms the basis of the disgorgement claim. Even Plaintiffs' allegation that Pourteimour's testimony in the Orange County dissolution states that her testimony reveals her husband's ongoing unlawful activity, not her own. (Compl. ¶ 23.) As to the breach of written contract claim, Plaintiffs do not allege that Pourteimour was a party to the contract itself, and thus fail to state a claim against her. Similarly, Plaintiffs' negligence claim simply states in legally conclusory language that Pourteimour owes Plaintiffs a duty, but provides no factual allegations that form a sufficient basis for such a duty. While the Court on demurrer takes all factual allegations in the Complaint as true, the same cannot be said for legal conclusions. (*Embarcadero Municipal Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 786.)

Plaintiffs labor under the misapprehension that in order to reach community property if and when a judgment is entered in their favor against Defendant Dayan, they must name Defendant Pourteimour as *personally* liable for the actual breaches underlying their causes of action. This is not the case. A plaintiff need not name a non-wrongdoing spouse in an action in order to reach the community estate to satisfy any judgment. (Cal. Family Code § 910(a); *see also Reynolds and Reynolds Co. v. Universal Forms, Labels & Systems, Inc.* (C.D.Cal. 1997) 965 F.Supp.1392, 1398 [granting motion to dismiss defendant's spouse from action because no act of wrongdoing was actually alleged against the spouse, and spouse was incorrectly named in their individual capacity, in the same manner as the defendants against whom personal liability was actually sought].)

Finally, Plaintiffs rely heavily on testimony and statements made in the marriage dissolution action filed in Orange County between Defendants Dayan and Pourteimour. Plaintiffs request that the Court take judicial notice of several filings and declarations in that action to establish Pourteimour's knowledge of Defendant Dayan's wrongdoing. However, while courts may take judicial notice of the existence, content, and authenticity of public records and other specified documents, a court may not take judicial notice of the truth of the factual matters asserted in those documents. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400 [declining to take judicial notice of the truth of factual averments from filings in a separate but related case].) The factual assertions in Pourteimour's declaration, for example, are therefore not judicially noticeable by this Court and do not form the basis of evaluation on demurrer. Even if they were, the Court finds it doubtful that such averments would establish the basis for Pourteimour's personal liability upon which Plaintiffs insist.

The parties' requests for judicial notice are therefore both GRANTED but only as to the existence and legal effect of the documents, not as to the truth of any factual matters asserted therein. (*Ibid.*) Defendant Pourteimour's demurrer is SUSTAINED as to all causes of action asserted against her in her personal capacity. Leave to amend is DENIED because Plaintiffs have not met their burden to establish how their Complaint may be amended to state a valid cause of action against Pourteimour. (*Jensen v. Home Depot, Inc.* (2018) 24 Cal.App.5th 92, 97.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a

written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
LINE:5

24-CIV-03444 RYAN MAYER VS. FRED ANGELOPOULOS, ET AL.

| | |
|---|---|
| RYAN MAYER | JEFFREY G. JACOBS |
| FRED ANGELOPOULOS | GULOMJON AZIMOV |

DEMURRER PLAINTIFF'S COMPLAINT BY DEFENDANT FRED ANGELOPOULOS
**TENTATIVE RULING:**

***Demurrer:***

Defendant Fred Angelopoulos's Demurrer to Plaintiff Ryan Mayer's Complaint is ordered OFF CALENDAR.

Moving and supporting papers are to be served and filed at least 16 court days before the hearing. Cal. Code of Civil Procedure Section 1005. Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing. Cal. Rules of Court, Rule 3.1300(c). Here, proof of service was required to be filed no later than Monday, March 3, 2025. No proof of service has been filed.

The hearing may be placed back on calendar upon the filing of proof of service of an updated Notice of Demurrer, as well as the Demurrer and any supporting papers.

2:00
LINE:6

24-CIV-03444 RYAN MAYER VS. FRED ANGELOPOULOS, ET AL.

| | |
|---|---|
| RYAN MAYER | JEFFREY G. JACOBS |
| FRED ANGELOPOULOS | GULOMJON AZIMOV |

MOTION FOR CHANGE OF VENUE BY DEFENDANT FRED ANGELOPOULOS
**TENTATIVE RULING:**

Defendant Fred Angelopoulos's Motion to Transfer Venue is ordered OFF CALENDAR.

Moving and supporting papers are to be served and filed at least 16 court days before the hearing. Cal. Code of Civil Procedure Section 1005. Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing. Cal. Rules of Court, Rule 3.1300(c). Here, proof of service was required to be filed no later than Monday, March 3, 2025. No proof of service has been filed.

The hearing may be placed back on calendar upon the filing of proof of service of an updated Notice of Motion, as well as the Motion and any supporting papers.

2:00
LINE:7

24-CIV-05515 SALLY S. JOHNSON VS. ARTICHOKE JOE'S

| | |
|---|---|
| SALLY S. JOHNSON | LAWRENCE M. CIRELLI |
| ARTICHOKE JOE'S | ROBERT H. BUNZEL |

MOTION TO INTERVENE BY PROSPECTIVE INTERVENOR CODY SAMMUT
**TENTATIVE RULING:**

Prospective Intervenor Karen "Annie" Sammut's and Prospective Intervenor Cody Sammut's Motions to Intervene are GRANTED. [1] Cody's request that the court take judicial notice of defendant Artichoke Joe's answer in the underlying action filed October 28, 2024 is GRANTED. (Evid. Code, § 452, subd. (d) & § 453).

Initially, the Court notes the prospective intervenors have provided an improper address for the hearing. Department 23 is not located in Redwood City as the notice states, but instead at the Northern Branch Courthouse Courtroom J, 1050 Mission Road, South San Francisco, CA 94080. (See Cal. Rules of Court, rule 3.1110 [the Notice "must specify" the location of the hearing].) Additionally, Department 23's calendar has been reassigned to the Honorable Donald R. Franchi, Department 15, Northern Branch Courthouse Courtroom K, 1050 Mission Road, South San Francisco, CA 94080.

The Court further notes prospective intervenor's briefs **both** contain citation to a not citable opinion, *Accurso v. In-N-Out Burgers* (2023) 313 Cal.Rptr.3d 51, as modified (Sept. 25, 2023), in conjunction with non-controlling federal authority. The Court does not consider these rulings and intervenors' counsel are reminded of their duty to cite appropriate sources.

Artichoke Joe's is a closely held family business with only a few shareholders. (Complaint ¶1.) The claims in the underlying action arise from a Stock Put/Call Option Agreement (hereinafter the "Option Agreement") that plaintiff Sally S. Johnson allegedly unknowingly entered into with Artichoke Joe's in 2011. Under the terms of the Agreement, Sally's heirs would be required to sell Sally's shares to the company for less than fair market value upon Sally's passing. (Complaint ¶ 65.) Annie and Cody bring the instant motions to

[1] To avoid unnecessary prolixity or confusion, given the surname in common, the court refers to parties by their first names.

intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B) and, alternatively, as a matter of permissive intervention under section 387, subdivision (d)(2). Sally has filed an omnibus opposition and defendant Artichoke Joe's has filed a response in support of Annie and Cody's motions.

Intervention is a procedure used by a nonparty, called an intervenor, to become a party to an action. (Code Civil Proc., § 387, subd. (b).) It is well-settled that intervention protects the interests of nonparties who will be affected by a judgment in the action, reduces delay, and prevents multiple lawsuits involving the same issues. (*State Water Bd. Cases* (2023) 97 Cal.App.5th 1035, 1045, review denied (Mar. 20, 2024) [citations omitted].) Intervention can be mandatory (i.e., as a matter of right) or permissive. (*Hodge v. Kickpatrick Dev., Inc*. (2015) 130 Cal.App.4th 540, 547; see Code Civ. Proc., § 387, subds. (d)(1)-(2).) "Because the decision whether to allow intervention is best determined based on the particular facts in each case, it is generally left to the sound discretion of the trial court. (Citation.)." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036 [27 Cal.Rptr.3d 722, 727]

The Court finds the applications to intervene were timely. (Code of Civil Procedure § 387, subd. (a).)

Mandatory Intervention

A nonparty has the right to intervene when "he or she has an interest in the property or transaction that is the subject of the action, he or she is so situated that the disposition of the action may impair or impede that person's ability to protect the interest, and that interest is not being adequately protected by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1)(B).)

Annie and Cody contend they should be allowed to intervene as a matter of right because they have an interest in the property or transaction that is the subject of the action, deciding the Stock Put/Call Option matter without their participation impairs their ability to protect their ownership interests and voting power, and the existing parties do not adequately represent their interests as individual shareholders. (Annie's Motion p. 7, Cody's Motion pp.7-8.) Code Civ. Proc., § 387, subd. (d)(1)(B).) Defendant Artichoke Joe's concurs with Annie and Cody's positions that their interests with respect to voting rights and increased share percentage are directly implicated by the underlying action which challenges the company stock purchase/call option agreement. (Response ISO Motions to Intervene, pp. 3-4.)

Sally asserts that the property at issue in this litigation is the agreement itself, which Annie and Cody were not part of, and/or

Sally's shares in Artichoke Joe's which are Sally's alone. (Opp. p. 4.) The fact that Annie and Cody own *other* Artichoke Joe's shares does not grant them a right to intervene. (Opp. p. 5.)

The "threshold question" in mandatory intervention is whether Annie and Cody's interests are of such consequence so as to necessitate their intervention. (*Turrieta v. Lyft, Inc*. (2021) 69 Cal.App.5th 955, 976, *aff'd* (2024). "An interest is consequential and thus insufficient for intervention when the action in which intervention is sought does not directly affect it although the results of the action may indirectly benefit or harm its owner." (*Continental Vinyl Products Corp. v. Mead Corp*. (1972) 27 Cal.App.3d 543, 550.) "Absent some special circumstance, a shareholder has a consequential but not direct interest in the outcome of litigation involving the corporation. (Citation.)"

Per the terms of the Option Agreement, upon Sally's passing, Sally's executor is granted a put option that would require Artichoke Joe's to repurchase her shares if the option is exercised. The Option Agreement also grants Artichoke Joe's a call option that would require Sally's executor to sell her shares back to the Company. (Complaint ¶¶28-29.) Sally currently owns 427.03 shares in Artichoke Joe's personally, and is trustee of 652.72 shares combined for three family trusts. (Declaration of Annie Sammut ¶4.) Upon careful review of Annie's and Cody's ownership of shares, the Court determines that Annie and Cody demonstrate direct, consequential interest in this litigation because Artichoke Joe's exercise of this Option Agreement will have an immediate impact upon the valuation and or worth of Annie's shares. Based on the same reasoning, Annie has likewise demonstrated to show that a failure to intervene may impair her ability to protect that interest.

Lastly, the Court determines that Annie has shown that her interest in the litigation is not necessarily being adequately protected just because of the roles they serve Artichoke Joe's as an entity. "Even where counsel for a closely held corporation treats the interests of the majority shareholders and the corporation interchangeably, it is the attorney-client relationship with the corporation that is paramount for purposes of upholding the attorney-client privilege against a minority shareholder's challenge. [Citation.]." (*Skarbrevik v. Cohen, England & Whitfield* (1991) 231 Cal.App.3d 692, 704.) Because the company's interests are not necessarily those of individual shareholders " 'individual shareholders or directors cannot presume that corporate counsel is protecting their interests.' (*La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 784." (*Sprengel v. Zbylut* (2019) 40 Cal.App.5th 1028, 1042, as modified (Sept. 17, 2019), as modified (Nov. 4, 2019).) Accordingly, the Court finds that Annie demonstrates she is entitled to intervene in this matter and her motion is GRANTED.

Permissive Intervention

A nonparty may be permitted to intervene when it has an interest in the matter, an interest in the success of either party, or an interest against both. (Code Civ. Proc., § 387, subd. (d)(2).) Courts have allowed permissive intervention when (1) the nonparty follows the proper procedures for intervention, (2) the nonparty has a direct and immediate interest in the action, (3) intervention will not enlarge the issues in the action, and (4) the reasons for intervention outweigh any opposition presented by the parties currently in the action. (*Siena Ct. Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1428 m. supra, 162 Cal.App.4th at p. 203.) The permissive intervention statute balances the interests of others who will be affected by the judgment against the interests of the original parties in pursuing their litigation unburdened by others. [Citation.]" (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) The requirement of a direct and immediate interest means that the interest must be of such a direct and immediate nature that the moving party " 'will either gain or lose by the direct legal operation and effect of the judgment.' [Citation.]" (*Turrieta*, at p. 976.)

Though Cody does not have direct ownership until he is 40 years old in August, 2025, his shares are held in his trust of which he is sole beneficiary. (Declaration of Cody Sammut ¶¶3-6.) Thus, Cody has a beneficial interest, which will vest in a matter of months. To preclude his intervention until that time in August would result in needless further motion practice in an already-heavily congested court calendar. Regardless, the outcome of the lawsuit will impact the proportionate dollar value of dividends Cody will receive before his ownership vests. (Cody Declaration ¶11.) Therefore, the Motion for permissive joinder of Cody is granted.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
LINE:8

24-CIV-05515 SALLY S. JOHNSON VS. ARTICHOKE JOE'S

| | |
|---|---|
| SALLY S. JOHNSON | LAWRENCE M. CIRELLI |
| ARTICHOKE JOE'S | ROBERT H. BUNZEL |

MOTION TO INTERVENE BY PROSPECTIVE INTERVENOR KAREN SAMMUT
**TENTATIVE RULING:**

Prospective Intervenor Karen "Annie" Sammut's and Prospective Intervenor Cody Sammut's Motions to Intervene are GRANTED. [2] Cody's request that the court take judicial notice of defendant Artichoke Joe's answer in the underlying action filed October 28, 2024 is GRANTED. (Evid. Code, § 452, subd. (d) & § 453).

Initially, the Court notes the prospective intervenors have provided an improper address for the hearing. Department 23 is not located in Redwood City as the notice states, but instead at the Northern Branch Courthouse Courtroom J, 1050 Mission Road, South San Francisco, CA 94080. (See Cal. Rules of Court, rule 3.1110 [the Notice "must specify" the location of the hearing].) Additionally, Department 23's calendar has been reassigned to the Honorable Donald R. Franchi, Department 15, Northern Branch Courthouse Courtroom K, 1050 Mission Road, South San Francisco, CA 94080.

The Court further notes prospective intervenor's briefs **both** contain citation to a not citable opinion, *Accurso v. In-N-Out Burgers* (2023) 313 Cal.Rptr.3d 51, as modified (Sept. 25, 2023), in conjunction with non-controlling federal authority. The Court does not consider these rulings and intervenors' counsel are reminded of their duty to cite appropriate sources.

Artichoke Joe's is a closely held family business with only a few shareholders. (Complaint ¶1.) The claims in the underlying action arise from a Stock Put/Call Option Agreement (hereinafter the "Option Agreement") that plaintiff Sally S. Johnson allegedly unknowingly entered into with Artichoke Joe's in 2011. Under the terms of the Agreement, Sally's heirs would be required to sell Sally's shares to the company for less than fair market value upon Sally's passing.

[2] To avoid unnecessary prolixity or confusion, given the surname in common, the court refers to parties by their first names.

(Complaint ¶ 65.) Annie and Cody bring the instant motions to intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B) and, alternatively, as a matter of permissive intervention under section 387, subdivision (d)(2). Sally has filed an omnibus opposition and defendant Artichoke Joe's has filed a response in support of Annie and Cody's motions.

Intervention is a procedure used by a nonparty, called an intervenor, to become a party to an action. (Code Civil Proc., § 387, subd. (b).) It is well-settled that intervention protects the interests of nonparties who will be affected by a judgment in the action, reduces delay, and prevents multiple lawsuits involving the same issues. (*State Water Bd. Cases* (2023) 97 Cal.App.5th 1035, 1045, review denied (Mar. 20, 2024) [citations omitted].) Intervention can be mandatory (i.e., as a matter of right) or permissive. (*Hodge v. Kickpatrick Dev., Inc*. (2015) 130 Cal.App.4th 540, 547; see Code Civ. Proc., § 387, subds. (d)(1)-(2).) "Because the decision whether to allow intervention is best determined based on the particular facts in each case, it is generally left to the sound discretion of the trial court. (Citation.)." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036 [27 Cal.Rptr.3d 722, 727]

The Court finds the applications to intervene were timely. (Code of Civil Procedure § 387, subd. (a).)

Mandatory Intervention

A nonparty has the right to intervene when "he or she has an interest in the property or transaction that is the subject of the action, he or she is so situated that the disposition of the action may impair or impede that person's ability to protect the interest, and that interest is not being adequately protected by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1)(B).)

Annie and Cody contend they should be allowed to intervene as a matter of right because they have an interest in the property or transaction that is the subject of the action, deciding the Stock Put/Call Option matter without their participation impairs their ability to protect their ownership interests and voting power, and the existing parties do not adequately represent their interests as individual shareholders. (Annie's Motion p. 7, Cody's Motion pp.7-8.) Code Civ. Proc., § 387, subd. (d)(1)(B).) Defendant Artichoke Joe's concurs with Annie and Cody's positions that their interests with respect to voting rights and increased share percentage are directly implicated by the underlying action which challenges the company stock purchase/call option agreement. (Response ISO Motions to Intervene, pp. 3-4.)

Sally asserts that the property at issue in this litigation is the agreement itself, which Annie and Cody were not part of, and/or Sally's shares in Artichoke Joe's which are Sally's alone. (Opp. p. 4.) The fact that Annie and Cody own *other* Artichoke Joe's shares does not grant them a right to intervene. (Opp. p. 5.)

The "threshold question" in mandatory intervention is whether Annie and Cody's interests are of such consequence so as to necessitate their intervention. (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 976, *aff'd* (2024). "An interest is consequential and thus insufficient for intervention when the action in which intervention is sought does not directly affect it although the results of the action may indirectly benefit or harm its owner." (*Continental Vinyl Products Corp. v. Mead Corp.* (1972) 27 Cal.App.3d 543, 550.) "Absent some special circumstance, a shareholder has a consequential but not direct interest in the outcome of litigation involving the corporation. (Citation.)"

Per the terms of the Option Agreement, upon Sally's passing, Sally's executor is granted a put option that would require Artichoke Joe's to repurchase her shares if the option is exercised. The Option Agreement also grants Artichoke Joe's a call option that would require Sally's executor to sell her shares back to the Company. (Complaint ¶¶28-29.) Sally currently owns 427.03 shares in Artichoke Joe's personally, and is trustee of 652.72 shares combined for three family trusts. (Declaration of Annie Sammut ¶4.) Upon careful review of Annie's and Cody's ownership of shares, the Court determines that Annie and Cody demonstrate direct, consequential interest in this litigation because Artichoke Joe's exercise of this Option Agreement will have an immediate impact upon the valuation and or worth of Annie's shares. Based on the same reasoning, Annie has likewise demonstrated to show that a failure to intervene may impair her ability to protect that interest.

Lastly, the Court determines that Annie has shown that her interest in the litigation is not necessarily being adequately protected just because of the roles they serve Artichoke Joe's as an entity. "Even where counsel for a closely held corporation treats the interests of the majority shareholders and the corporation interchangeably, it is the attorney-client relationship with the corporation that is paramount for purposes of upholding the attorney-client privilege against a minority shareholder's challenge. [Citation.]." (*Skarbrevik v. Cohen, England & Whitfield* (1991) 231 Cal.App.3d 692, 704.) Because the company's interests are not necessarily those of individual shareholders " 'individual shareholders or directors cannot presume that corporate counsel is protecting their interests.' (*La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 784." (*Sprengel v. Zbylut* (2019) 40 Cal.App.5th 1028, 1042, as modified (Sept. 17, 2019), as modified (Nov. 4, 2019).)

Accordingly, the Court finds that Annie demonstrates she is entitled to intervene in this matter and her motion is GRANTED.

Permissive Intervention

A nonparty may be permitted to intervene when it has an interest in the matter, an interest in the success of either party, or an interest against both. (Code Civ. Proc., § 387, subd. (d)(2).) Courts have allowed permissive intervention when (1) the nonparty follows the proper procedures for intervention, (2) the nonparty has a direct and immediate interest in the action, (3) intervention will not enlarge the issues in the action, and (4) the reasons for intervention outweigh any opposition presented by the parties currently in the action. (*Siena Ct. Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1428 m. supra, 162 Cal.App.4th at p. 203.) The permissive intervention statute balances the interests of others who will be affected by the judgment against the interests of the original parties in pursuing their litigation unburdened by others. [Citation.]" (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) The requirement of a direct and immediate interest means that the interest must be of such a direct and immediate nature that the moving party " 'will either gain or lose by the direct legal operation and effect of the judgment.' [Citation.]" (*Turrieta*, at p. 976.)

Though Cody does not have direct ownership until he is 40 years old in August, 2025, his shares are held in his trust of which he is sole beneficiary. (Declaration of Cody Sammut ¶¶3-6.) Thus, Cody has a beneficial interest, which will vest in a matter of months. To preclude his intervention until that time in August would result in needless further motion practice in an already-heavily congested court calendar. Regardless, the outcome of the lawsuit will impact the proportionate dollar value of dividends Cody will receive before his ownership vests. (Cody Declaration ¶11.) Therefore, the Motion for permissive joinder of Cody is granted.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
LINE:9

24-UDL-01681 THE JOHN STEWART COMPANY VS. AARON GARY

| | |
|---|---|
| THE JOHN STEWART COMPANY | MERCEDES A. GAVIN |
| AARON GARY | PRO SE |

MOTION TO COMPEL DEFENDANT AARON GARY'S RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES – GENERAL, SET ONE, PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, TO DEEM FACTS ADMITTED AND REQUEST FOR SANCTIONS AGAINST DEFENDANT AARON GARY IN THE AMOUNT OF $585.00 BY PLAINTIFF THE JOHN STEWART COMPANY

**TENTATIVE RULING:**

As Defendant has not filed a written opposition pursuant to Cal. Rules of Court, rule 3.1347(c) and as Cal Rules of Court 3.1347(b) allows Defendant to make an oral opposition on the hearing date, the Court will not issue a tentative decision and **parties are directed to appear on this matter.**

2:00
LINE:10

24-UDU-01214 JOSEPH GIRAUDO VS. YANG MIN YANG, ET AL.

| | |
|---|---|
| JOSEPH GIRAUDO | GARY W. SULLIVAN |
| YANG MIN YANG | JONATHAN E. MADISON |

MOTION TO QUASH DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS BY DEFENDANT YANG MIN YANG

**TENTATIVE RULING:**

Defendant Yang Min Yang's Motion to Quash Deposition Subpoena for Production of Business Records is DENIED.

The motion is not accompanied by a separate statement as required by the California Rules of Court. (See Cal. Rules of Court, rule 3.1345(a)(5).) The denial is with prejudice.

Court will grant limited protective order that for personal identifying information such as Driver's License, SS and account No. may be redacted except as to the last 4 digits.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00
LINE:11

24-UDU-01214 JOSEPH GIRAUDO VS. YANG MIN YANG, ET AL.

| | |
|---|---|
| JOSEPH GIRAUDO | GARY W. SULLIVAN |
| YANG MIN YANG | JONATHAN E. MADISON |

MOTION TO QUASH DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS BY CLAIMANT JINGYI WU

**TENTATIVE RULING:**

Defendant Jingyi Wu's Motion to Quash Deposition Subpoena for Production of Business Records is DENIED.

The motion is not accompanied by a separate statement as required by the California Rules of Court. (See Cal. Rules of Court, rule 3.1345(a)(5).) The denial is with prejudice.

Court will grant limited protective order that for personal identifying information such as Driver's License, SS and account No. may be redacted except as to the last 4 digits.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

POSTED: 3:00 PM