Superior Court of California
County of San Benito

Tentative Decisions for March 20, 2024

Courtroom #1: Judge Thomas P. Breen

CU-22-00178 Genflora Holdings, LLC, et al vs. Kevin Moore, et al.

Plaintiff: David Morales

Defendant: Sean Fischer

On calendar for Plaintiff's 11-1-23 Motion for Attorney's Fees and Costs. (Opposition Due 11-17-23; Reply 11-22-23); Defendant's 12-26-23 Demurrer to FACC.

Proposed Rulings:

1) The Plaintiff's motion for Attorney's Fees and Costs is Granted as prayed.
2) The Defendant's demurrer to the First Amended complaint is Sustained without leave to amend as to the First Cause of Action.

9-7-22 Complaint filed seeking damages, declaratory relief, injunctive relief, punitive, and exemplary damages, and other relief, based on the following causes of action: 1) Larceny; 2) Conversion; 3) Breach of Implied Covenant of Good Faith and Fair Dealing; 4) Breach of Fiduciary Duty; 5) Fraud and Intentional Deceit; and 6) Constructive Fraud.

10-27-23 First amended Complaint is filed seeking damages, declaratory relief, injunctive relief, punitive, and exemplary damages, and other relief, based on the following causes of action: 1) Larceny; 2) Conversion; 3) Breach of Implied Covenant of Good Faith and Fair Dealing; 4) Breach of Fiduciary Duty; 5) Fraudulent Concealment; and 6) Constructive Fraud.

Procedurally, the Plaintiffs had to seek court permission for alternate means of service of the Summons and Complaint, after all reasonable attempts to locate the Defendants or their agents for service of process proved futile. The court granted Plaintiff's motion for order authorizing service by publication and by the Secretary of State on January 30, 2023. Service was completed February 6, 2023, and the Defendants' default entered August 17, 2023. On August 28, 2023, on Ex Parte, the court vacated the entry of the default and set the matter on for a motion hearing on Attorney's Fees. The court granted the parties until September 22, 2023, to file a responsive pleading. Notice was

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waived. The parties subsequently stipulated to a continuance of the motion hearing from October 25, 2023, to November 29, 2023, to accommodate the Plaintiff's intention to amend the Complaint by October 27, 2023, and the Defendant agreed to accept service of the amended complaint by mail, and to file a response thirty days after service.

11-1-23 Motion: Plaintiffs seek their attorneys' fees incurred up to the date of the motion, reciting the efforts made to have Defendants served, and noting that ultimately, they were forced to pursue leave of court to effect service by alternate means.

Opposition: Plaintiff was never served, and there is no evidence of any personal service or service by publication as ordered, thus the motion is defective on its face and should be denied. Plaintiffs should have called his counsel in his other cases to ask if he would have accepted service. The court ordered 1-30-2023 that Defendant be served by publication. No evidence has been submitted that this was ever done. The business was not properly served either the operative summons was a summons of an amended summons, but did not reference an amended complaint, and again Moore was not personally served; only the agent for service for K2J Enterprises, nor did they attempt service by acknowledgement and receipt. They didn't bother to try any of these alternative means, particularly seeking out Defendant's counsel in other cases in order to serve him. Because the proof of service referenced an Amended Complaint, and there was no amended complaint filed at the time, service, even if allowed, is void on its face as it does not meet statutory requirements. (*Ramos v. Homeward Residential, Inc.* (2014) 223 Cal. App. 4th 1434, 1441-1442). Therefore, fees are not proper because Moore was never served, and the fee request lacks both legal and evidentiary support.

Reply: The argument that Defendants were never served or that service was improper lacks merit: Defendants never filed a Motion to Quash, nor do they contend this court lacks *in personam* jurisdiction over them. These issues are therefore not before the Court. Further, Defendants have repeatedly appeared in this matter, filing a number of motions and other pleadings, thus this court has personal jurisdiction over them as if they had been served. Their acts would constitute general appearance and they have thus waived objections to the court's exercise of personal jurisdiction. (*Air Machine Com. SRL v. Sup. Ct.* (2010) 186 Cal. App. 4th 414, 419.) Moreover, Defendants do not cite any legal authority showing award of attorney's fees and costs would be improper based on their arguments Since they are unsupported by any legal authority or cogent argument, they should be disregarded. (*Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cao, App. 45h 997, 1002 (note 5); *Keys v. Bowen* (2010) 189 Cal. App. 4th 647, 656. [it is appellant's responsibility to support his legal argument with citation and authority; the court is not obligated to perform that function.]) Service through is business was proper (CCP§415.20(a).) Here, the evidence is that Defendant was evading service, and despite reasonable diligence he could not be personally served, such that substituted servicer was used. Defendant's fail to cite any authority that this was not proper, and the effort to distinguish *Ellard v. Conway* are without substance; nor is there support for the argument that Plaintiffs needed to engage in even more efforts to effect personal service. Fees and costs are well substantiated.

Legal Standard: The court has the discretion when vacating a default or default judgment, to impose as a condition on opening or vacating the default, that the defaulting party pay proper fees to the opposing party. (*William Wolff & Co. v. Canadian P.R. Co.* (1891) 89 Cal 332, 338; *Stub v. Harrison* (1939) 35 Cal. App. 2d 685, 690.) As noted in Cal Code of Civil Procedure section 473 subsection (c),

whenever the court "grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

(A) Impose a penalty of no greater than one thousand dollars ($1,000) upon an offending attorney or party.
(B) Direct that an offending attorney pay an amount no greater than one thousand dollars ($1,000) to the State Bar Client Security Fund.
(C) Grant other relief as is appropriate. "

Analysis: Plaintiff's declaration appended to their motion clarifies the lengths to which they were compelled to go to effectuate service on the Defendants. Despite due diligence, the Plaintiffs have shown that the Defendants could not be served by the means specified in Code of Civil Procedure sections 415.10 through 415.30. The Plaintiffs investigated the status of Defendant K2J with the California Secretary of State, performed a skip trace for Defendant Moore, and learned that KJ2's agent for service resigned on or about March 23, 2022, and that no new agent was designated until September 17, 2023. (Morales Dec. ¶3.) The Plaintiffs also learned through the Secretary of State that Defendant Moor is a member or manager of K2J, which only has one manager. (*Id.*) The efforts did not end there and included researching the status of Defendant Moore's other pending litigation and attempting to have him served outside the courthouse after a scheduled hearing on January 25, 2023. Defendant Moore did not attend court that day. (Morales Dec. ¶¶ 6-7.) According to the Plaintiff's counsel, all these efforts took more than 42.8 hours of time to investigate, prepare pleadings, attempt to determine the Defendant's whereabouts, and obtain service and then the default. (Morales Dec. ¶8.) After obtaining Defendants' default, Plaintiff has incurred additional fees resulting from an estimated 6.6 hours to prepare the briefings for this matter, as well as to attend the hearing. Given the rate of $495.00 per hour, the total requested is $25,851.97. (Morales Dec. ¶9.)

The cases cited by the Plaintiff remain a solid interpretation of the scope of the court's discretion and authority in this matter. Moreover, the court's authority to issue an award of attorney's fees when relief from default is granted is enshrined in section 473 sub part (c) of the Code of Civil Procedure, which states that when the court grants relief from a default, "the court may do any of the following…(C) Grant other relief as is appropriate." In this instance, the extraordinary lengths to which Plaintiffs were put to obtain service of process in this suit are well documented, and the inference that Plaintiff makes as to why such efforts were needed is sound. Defendant cites to cases where substituted service was incorrectly performed (i.e. dropping a copy of the summons and complaint on the desk at the front office, but incorrectly mailing the copy to follow (*Ramos v. Homeward Residential, Inc., supra,* at 1439-1440.) Thus, it is both appropriate under the circumstances and within this court's authority to grant an award of attorneys' fees up to and including the date of the motion.

Proposed Ruling: The Plaintiff's Motion is GRANTED as prayed.

Defendant's Demurrer to FAC:

12-26-23 Defendant demurs to the First through the Sixth Causes of Action, for failing to state facts sufficient to state a cause of action. For the Second Cause of Action through the Sixth Causes of Action the Defendant also asserts that the FAC is uncertain. (CCP§430.10 sub (e) and (f).)

Defendant argues that after initial meet and confer they discussed with Plaintiff deficiencies in their original complaint which failed to state claims on which relief could be granted. The FACC was filed October 27, 2023, but failed to remedy the defects originally discussed. They have attempted to contact Plaintiff's for further meet and confer, including by letter, but have received no response. Per CCP §430.41 (a)(2); the last day to meet and confer was 11-22-23, and they have filed their declaration of inability to meet and confer 11-27-23, and the date to file any responsive pleading would thus be extended to 1-2-24. Further attempts to communicate were made and were unsuccessful until 12-15-23. The crux of the issue is that Plaintiff's assert Defendants misappropriated "products" and unidentified monies belonging to the Plaintiffs, and though alleging fraud, no specifics are pled. Defendant also asserts the cause of action for Larceny is improper, as there is no civil cause of action for larceny. However, pursuant to *Siry Investment LP. v. Farkhondehpour* (2022) 13 Cal. 5th 333, the remedies of Penal Code 496 sub (c) are available in a properly pled civil action.

Petitioner argues that Defendant misapprehends the analysis of *Siry,* and that they are entitled to pursue a cause of action for Larceny because they are entitled to pursue the civil remedies under Penal Code section 496, whether the claim is based on fraud or on theft. *Bell v. Feibush* (2013) 212 Cal. App. 4th 1041, 1049, recognizes a civil cause of action for larceny. Therefore, the demurrer to the first cause of action should be overruled. The demurrer to the remaining causes of action should be overruled as well. The Plaintiff has adequately pled the elements required for the claims sounding in fraud. Though Defendant focuses on the heightened pleading requirements involving explicit misrepresentations of fact, rather the pleading requirements for their claims of fraudulent concealment or fraudulent omissions. Finally, the demurrer to all non-fraud causes of action based on uncertainty are neither ambiguous nor unintelligible and should thus be overruled.

Defendant replies that Plaintiff does not dispute that Larceny is not an independent civil action, and that they cannot make that claim. Even the plaintiff in *Siry* did not allege a cause of action for larceny, rather it sought remedies available under Penal Code §496(c). (*Siry Investment L.P. v. Farkhondepour, supra,* 13 Cal. 5th at 355.) The California Suprem Court held that the remedies permitted under Penal Code §496(c)-treble damages and attorney's fees and costs- are available in limited civil cases "when property has been obtained in any manner constituting theft." (*Id.* at 361.) It did not create a civil cause of action for larceny. Claims sounding in fraud must be pled with particularity. Plaintiffs assert claims for Constructive Fraud and Fraudulent Concealment are not fraud claims but provide no support for this argument. No such authority exists. A claim of fraud, whether based on deceit or concealment must be pled with specificity. (*Cansino v. Bank of America* (2014) 224 Cal. App.4th 1462,1472.) All of the other claims are uncertain.

Legal Standards:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether the plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability to prove the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate

courts' well-established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.) If it is possible for a complaint to be amended to properly state a cause of action, it is generally an abuse of discretion to deny leave to amend. When a demurrer is made on the grounds of uncertainty, it must be stated exactly how and why the pleading is uncertain and where such uncertainty appears on the face of the complaint. (*Robert* E. Weil*, et al.* California Practice Guide: Civil Procedure Before Trial ¶7:86-7:88 (The Rutter Group, 2024.) A demurrer for uncertainty will only be sustained where the complaint is so uncertain that the defendant is unable to respond reasonably, cannot determine what issues must be admitted or denied, or what claims have been directed to the defendant. (Code of Civil Procedure *§430.10 sub (f)*; *Khoury v. Maly's of Cal. Inc.* (1993) 14 Cal. App. 4th 612, 616.)

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the complaint, but not " 'contentions, deductions or conclusions of fact or law.' " (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) (See also *City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Carloss v. County of Alameda* (2015) 242 Cal. App. 4th 116, 123.) The Court deems the facts alleged to be true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co*. (1981) 123 Cal. App. 3d 593, 604*; Universal By-Products, Inc. v. City of Modesto* (1974) 43 Cal.App.3d 145, 151.) The Court gives the complaint "a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan*, supra, 39 Cal. 3d at 318.) "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc. § 452.) Further, "[i]f the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer." (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 38.) The Court is limited to consideration of the complaint and matters of which the Court can take judicial notice. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 ["In reviewing the ruling on a demurrer, a court cannot consider, as Mercury would have us do, the substance of declarations, matter not subject to judicial notice, or documents judicially noticed but not accepted for the truth of their contents. (Citations omitted.)"].)

The pleading rules of liberality have a few exceptions. One area that requires allegations to be made with particularity is that of fraud. (Committee On Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 216.) This particularity requirement serves two purposes. First, it provides notice to the Respondent to furnish the Respondent with certain definite charges which can be intelligently met. Second, the pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud. But as discussed below, there are situations where fraud need not be alleged with particularity.

"Less specificity is required when Respondent must necessarily possess full information concerning the facts of the controversy." (*Committee On Children's Television, Inc. v. General Foods Corp*., 35 Cal.3d at p. 217.) "Even under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party . . ." (Ibid.) California courts have also recognized that where the plaintiffs allege a widespread fraudulent

scheme, alleging the minutiae of the scheme is neither required, nor practical. In Sepulveda, for example, the court stated: "We acknowledge the allegations of fraud lack the specific detailed minutiae desired by the [] defendants. Those details, however, are properly the subject of discovery, not demurrer. The magnitude of the fraudulent scheme alleged, and the number of plaintiffs involved invoke the analogy to the fact situation in *Committee on Children's Television,*" supra, 35 Cal.3d 197, 214. *People ex rel. Sepulveda v. Highland Fed. Savings & Loan* (1993) 14 Cal.App.4th 1692, 1718 ("*Sepulveda*"). Quoting *Committee on Children's Television*, the *Sepulveda* court affirmed that where a broad pattern of fraud is alleged. Furthermore, the requirement of "particularity" in pleading fraud should not be overdone, in that complaints should be kept to a reasonable length. (*Committee on Children's Television, Inc. v. General Foods Corp.*, supra, 35 Cal. 3d at p. 217.)

Analysis:

The argument as to the first cause of action for Larceny presents an interesting question: how does one properly plead in a civil case to raise the remedies for theft as presented in Penal Code section 496 sub part (c)? The Plaintiff's argument is that because the remedies permitted under statute include monetary recovery (treble damages), that a cause of action for Larceny, is proper in a civil case. While the penalties for larceny sound civilly, the charge of larceny, a criminal theft, is not proper in a civil context. Criminal theft refers to several crimes involving the taking way or controlling of property without the owner's consent. Civil theft, though similar, is a tort: a wrongful act which infringes upon the rights of another that result in civil liability, usually monetary damages. Both parties look to *Siry Investment, LP v. Farkhondehpour* (2022) 13 Cal. 5th 333 for support on their position.

Siry Investment involved a limited partnership formed to renovate and lease a commercial building. One of the limited partners (Plaintiffs) sued the general partner and the three other limited partners, claiming, severally, that the general and other limited partners diverted rental income from the property for their own benefit, resulting in underpayment of cash distributions to the plaintiff. In addition to the usual damages requests, the Plaintiff also asked for attorney's fees and treble damages under Penal Code section 496. [1] At trial, the court entered judgment for the Plaintiff, including the requested award for attorneys' fees and treble damages under section 496 sub part (c). On appeal, the Supreme Court held that on the facts of the case that section 496 sub part (c) was applicable, and the award of fees and treble damages appropriate. They went on to note that for section 496 to apply, the Plaintiff had to prove criminal intent under the statute. But the language implies that criminal intent may be merely proven by showing intentional misconduct as opposed to

[1] Penal Code §496 (a) reads "Every person who…receives any property that…has been obtained in any manner constituting theft.., knowing the property to be so…obtained, or who conceals, …withholds, or aids in concealing…or withholding any property from the owner, knowing the property to be so…obtained shall be punished by imprisonment in a county jail for not more than one year, or imprisonment….(c) *Any person who has been injured by a violation of subdivision (a)…may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.* (Emphasis added.) "Theft" is defined by Penal Code §484 thusly "(a) Every person who shall feloniously… take…the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly by any false or fraudulent representation or pretense, defraud any other person of money…is guilty of theft."

innocent or inadvertent misrepresentation or unfulfilled promise, or innocent breach of contact. What they did not state is that in proving up said criminal intent under the statute that they created a new civil cause of action for Larceny. No such cause of action exists in the civil context nor does even a generous reading of *Bell v. Feibush* (2013) 212 Cal. App. 4th 1041 provide, as Plaintiff argues, for a civil cause of action for Larceny. What this case does, and which *Siry* recapitulates, is that a plaintiff in a civil action, if providing sufficient proof of criminal intent, may request and receive damages pursuant to Penal Code section 496(c). What does not exist is a separate civil cause of action for larceny.

The court therefore sustains the demurrer without leave to amend as to the first cause of action.

The Defendant here argues that the demurrers should be sustained without leave to amend as to the remaining causes of action. Defendant argues, as to the second through the fourth causes of action, inclusive, is that they are uncertain pursuant to CCP§430.10 sub (f) and thus the court should sustain the demurrer without leave to amend. However, as interpreted by the courts, for a pleading to be "uncertain" in the context of a demurrer requires that it be so uncertain that the Defendant is unable to intelligently answer. In short, that the pleading is so ambiguous or unintelligible that the Defendant cannot reasonably determine what issues must be admitted or denied, or even what claims are being directed to that defendant (*Khoury v. May's of Cal., Inc.* (1993) 14 Cal. App. 4th 612, 616.) When a demurrer is made based on uncertainty, the Defendant must specify how and why the pleading is uncertain, and where such uncertainty appears. (Robert E. Weil, *et al.*, California Practice Guide: Civil Procedure Before Trial¶¶7:86-7:88 (internal citations omitted.).) While Defendants argue the complaint is too uncertain to withstand scrutiny because the specific products alleged misappropriated are not named, pursuant to the Complaint the Defendant was a key member of the Plaintiff's business and was directly managing the business and the production of said products. (Complaint, ¶¶6, 14.) Such matters are ordinarily resolved through stipulation. All that is required of the Plaintiff to withstand demurrer is to plead facts showing that the plaintiff may be entitled to some relief. (*Alcorn v. Anbrow Engineering, Inc.* (1970) 2 Cal. 3d 492, 496.) The court will assume the truth of the allegations and provide reasonable interpretation of it on the whole and with all parts in context. (Stop *Youth Addiction, Inc.* v. *Lucky Stores, Inc.* (1998) 17 Cao 4th 553, 558.) The court may also accept facts that may be implied or inferred. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal. App. 4th 1397, 1403.) Finally, even though facts are not clearly stated or intermingled with a statement of irrelevant facts, the court may still uphold the complaint. (*Committee on Children's Television, Inc. v. General Foods Corp.* (2983) 35 al. 3rd 197, 213-214. ('[T]he question of plaintiff's ability to prove these allegations, or the difficulty in making such proof does not concern the reviewing court.').) The demurrer as to the second, third, and fourth causes action is therefore overruled.

With regard to the fifth and sixth causes of action which sound in fraud, the Defendant argues that the Plaintiff has failed to plead with sufficient particularity as is required. The pleading rules of liberality have a few exceptions. One area that requires allegations to be made with particularity is that of fraud. (Committee On Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 216.) This particularity requirement serves two purposes. First, it provides notice to the Respondent to furnish the Respondent with certain definite charges which can be intelligently met. Second, the

pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud. But as discussed below, there are situations where fraud need not be alleged with particularity.

"Less specificity is required when Respondent must necessarily possess full information concerning the facts of the controversy." (*Committee On Children's Television, Inc. v. General Foods Corp*., supra, 35 Cal.3d at p. 217.) "Even under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party . . ." (Ibid.) Furthermore, the requirement of "particularity" in pleading fraud should not be overdone, in that complaints should be kept to a reasonable length. (Id. at p. 217.) The Defendant argues that the Plaintiff's here, like the plaintiff in *Cansino v. Bank of America, supra,* at 1471, are unable to demonstrate why defendants would necessarily possess the full information regarding the actions alleged. However, the comparison does not bear close scrutiny. *Cansino v. Bank of America* involves the representations made by a lender to a borrower regarding market appraisals of the value of the Plaintiff's property in order to inveigle Plaintiffs to enter loan agreements. Here the issue is not a question of market appraisals, but, for example, the diversion of products for delivery on order to another party or parties and the interception of payment for that product resulting in a loss to the Plaintiff. Such actions rather than being in the ordinary course of business, such as obtaining and utilizing a market value appraisal without indicating how the defendant knew the appraisal misrepresented market value at the time it was appraised. This stands in stark contrast to the Defendant here, who was an insider to the Plaintiff's business and served in a managerial role directing fulfilment of contracts, receipt of payment, production lines, among other aspects of the plaintiff's business, on a day-to-day basis.

Second, California courts have also recognized that where the plaintiffs allege a widespread fraudulent scheme, alleging the minutiae of the scheme is neither required, nor practical. In Sepulveda, for example, the court stated: "We acknowledge the allegations of fraud lack the specific detailed minutiae desired by the [] defendants. Those details, however, are properly the subject of discovery, not demurrer. The magnitude of the fraudulent scheme alleged, and the number of plaintiffs involved invoke the analogy to the fact situation in Committee on Children's Television," supra, 35 Cal.3d 197, 214. People ex rel. Sepulveda v. Highland Fed. Savings & Loan (1993) 14 Cal.App.4th 1692, 1718 ("Sepulveda"). Quoting Committee on Children's Television, the Sepulveda court affirmed that where a broad pattern of fraud is alleged, to require plaintiffs to plead the specifics of each [fraudulent] advertisement would render a suit challenging the overall program impractical.

In *Committee on Children's Television, Inc. v. General Foods Corp.* the issue was the content of deceptive advertising by the Defendant played over time, which if each individual airing of the suspect commercials were to be detailed would have resulted in a complaint of thousands of pages. Moreover, the Defendant, more than anyone else, was aware of the content of the advertisements, the claims made therein, where and when, and in which markets the subject advertisements were aired. Here, plaintiff has alleged a series of events where various of the Plaintiff's hemp products were diverted from their contracted purchasers and sold by the Defendant, and that this kind of malfeasance was witnessed and as implied, occurred more than once. The complaint also alleges that

the Defendant misappropriated funds by altering wire transfer instructions without the Plaintiff's knowledge or consent, directing them to his personal accounts, among other acts, and deliberately concealed these acts from Plaintiffs. The Defendant more than the plaintiff is more likely to be able to detail the inventory, the processes of sale, the customer base, the practices of initiating and directing wire transfers, the production of product, which hemp products were in production during which years as he was the general manager of Glenflora. While the Defendant argues that the plaintiff has failed to state which specific products, how much, and on which specific dates, such information as alleged is particularly within the Defendant's knowledge, where, as here a widespread scheme to defraud is alleged. The demurrer to the fifth and sixth causes of action is therefore overruled.

END OF TENTATIVE RULING

****Please contact Judicial Courtroom Assistant, Wendy Guerrero, at (831) 636-4057 x129 or wguerrero@sanbenitocourt.org with any objections or concerns.**