Litigation Due Diligence Analysis

Altawaty and Shbeeb v Langstaff DDS, et al.

30-2024-01439562-CU-F-NJC

By

TP

October 10, 2024

Table of Contents

[1. SUMMARY 8](#_Toc130368692)

[2. PARTIES/SIGNIFICANT FIGURES 8](#_Toc130368693)

[3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT 11](#_Toc130368694)

[4. yn\_notable\_provisions\_govdocs\_table == "Yes" NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS###yn\_notable\_provisions\_agreement\_table == "Yes" NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS###yn\_notable\_provisions\_govdocs\_table == "No" or yn\_notable\_provisions\_agreement\_table == "No"RESERVED### 13](#_Toc130368695)

[5. ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT 14](#_Toc130368696)

[6. CIVIL CODE § 5200 DOCUMENT DEMAND 15](#_Toc130368697)

[7. ADDITIONAL DOCUMENTS NEEDED FROM CLIENT 16](#_Toc130368698)

[8. THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST 17](#_Toc130368699)

[9. MUST NOT USE HOA’S PRIVILEGED DOCUMENTS 19](#_Toc130368700)

[9.1. Can Client Waive the Privilege? 19](#_Toc130368701)

[9.2. Does the CRPC Require the Firm to *Return* the Privileged Documents? 20](#_Toc130368702)

[9.3. Does Providing Privileged Documents to the Firm Constitute a Fiduciary Breach by Client? 21](#_Toc130368703)

[10. radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "Yes" POTENTIAL CROSS-CLAIMS & THE STRENGTHS/WEAKNESSES OF EACH### 21](#_Toc130368704)

[10.1. Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975 21](#_Toc130368705)

[10.2. Breach of Contract 24](#_Toc130368706)

[10.3. Implied Covenant of Good Faith and Fair Dealing 25](#_Toc130368707)

[10.4. Breach of Other Governing Documents 27](#_Toc130368708)

[10.5. Negligence 29](#_Toc130368709)

[10.6. Breach of Fiduciary Duty 32](#_Toc130368710)

[10.7. Nuisance 35](#_Toc130368711)

[10.8. Trespass 39](#_Toc130368712)

[10.9. Interference with Prospective Business Advantage 42](#_Toc130368713)

[10.10. Interference with Contract 44](#_Toc130368714)

[10.11. Intentional Misrepresentation (Fraud) 45](#_Toc130368715)

[10.12. Negligent Misrepresentation 49](#_Toc130368716)

[10.13. Intentional Infliction of Emotional Distress (“IIED”) 51](#_Toc130368717)

[10.14. Violation of Open Meeting Act 52](#_Toc130368718)

[10.15. Declaratory Relief 54](#_Toc130368719)

[10.16. Violation of Election Laws (Civ. Code, § 5100 et seq.) 58](#_Toc130368720)

[10.17. Assault 62](#_Toc130368721)

[10.18. Battery 63](#_Toc130368722)

[10.19. Defamation 65](#_Toc130368723)

[10.20. Civil Stalking 67](#_Toc130368724)

[10.21. Violation of Statute (Dog Bite) 69](#_Toc130368725)

[10.22. False Imprisonment 71](#_Toc130368726)

[10.23. Invasion of Privacy 72](#_Toc130368727)

[10.24. Express Indemnity 74](#_Toc130368728)

[10.25. Equitable Indemnity 76](#_Toc130368729)

[10.26. Failure to Permit Inspection of Records 77](#_Toc130368730)

[10.27. Quiet Title 78](#_Toc130368731)

[10.28. Slander of Title 80](#_Toc130368732)

[10.29. Cancellation of Instrument 81](#_Toc130368733)

[10.30. Reformation of Instrument 82](#_Toc130368734)

[10.31. Partition 84](#_Toc130368735)

[10.32. Conversion 85](#_Toc130368736)

[10.33. Trespass to Chattels 87](#_Toc130368737)

[10.34. Open Book Account 89](#_Toc130368738)

[10.35. Money Had and Received 90](#_Toc130368739)

[10.36. Account Stated 91](#_Toc130368740)

[10.37. Goods and Services Rendered 92](#_Toc130368741)

[10.38. Unjust Enrichment 93](#_Toc130368742)

[10.39. Rescission 94](#_Toc130368743)

[10.40. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 95](#_Toc130368744)

[10.41. Negligent Hiring 97](#_Toc130368745)

[10.42. Negligent Supervision 99](#_Toc130368746)

[10.43. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 102](#_Toc130368747)

[10.44. Receipt of Stolen Property (Penal Code § 496) 104](#_Toc130368748)

[10.45. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 105](#_Toc130368749)

[10.46. Recovery Against Contractor’s Bond 108](#_Toc130368750)

[10.47. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 109](#_Toc130368751)

[10.48. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 113](#_Toc130368752)

[10.49. Malicious Prosecution 114](#_Toc130368753)

[10.50. Abuse of Process 117](#_Toc130368754)

[10.51. Insurance Bad Faith 120](#_Toc130368755)

[10.52. Medical Malpractice 123](#_Toc130368756)

[10.53. Legal Malpractice 126](#_Toc130368757)

[10.54. Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.) 131](#_Toc130368758)

[10.55. 134](#_Toc130368759)

[10.56. Violation of Labor Code Section 226.8 (Intentional Misclassification); Failure to Pay Wages (Labor Code Sections 201-204); Failure to Provide Accurate Wage Statements (Labor Code Section 226); Failure to Provide Meal and Rest Periods (Labor Code Sections 226.7, 512); Failure to Reimburse Business Expenses (Labor Code Section 2802) 135](#_Toc130368760)

[radio\_client\_plaintiff\_defendant == "Defendant/Respondent" 136](#_Toc130368761)

[11. POTENTIAL AFFIRMATIVE DEFENSES 136](#_Toc130368762)

[11.1. BJR (Lamden) 136](#_Toc130368763)

[11.2. Statute of Limitations 138](#_Toc130368764)

[11.3. Equitable Estoppel 144](#_Toc130368765)

[11.4. Unclean Hands 144](#_Toc130368766)

[11.5. Laches 144](#_Toc130368767)

[11.6. Negligence (Comparative Fault) 145](#_Toc130368768)

[11.7. Apportionment 145](#_Toc130368769)

[11.8. Negligence (Sudden Emergency) 146](#_Toc130368770)

[11.9. Assumption of Risk 146](#_Toc130368771)

[11.10. Contract (Force Majeure) 147](#_Toc130368772)

[11.11. Contract (Duress) 147](#_Toc130368773)

[11.12. Contract (Fraud) 148](#_Toc130368774)

[11.13. Contract (Frustration of Purpose) 149](#_Toc130368775)

[11.14. Contract (Lack of Consideration) 149](#_Toc130368776)

[11.15. Contract (Failure of Consideration) 150](#_Toc130368777)

[11.16. Contract (Illegality) 150](#_Toc130368778)

[11.17. Contract (Impossibility) 151](#_Toc130368779)

[11.18. Contract (Impracticability) 151](#_Toc130368780)

[11.19. Contract (Mistake of Law) 152](#_Toc130368781)

[11.20. Contract (Mistake of Fact) 152](#_Toc130368782)

[11.21. Contract (Novation) 153](#_Toc130368783)

[11.22. Contract (Statute of Frauds) 153](#_Toc130368784)

[11.23. Contract (Unconscionability) 154](#_Toc130368785)

[11.24. Contract (Undue Influence) 155](#_Toc130368786)

[11.25. Contract (Accord and Satisfaction) 155](#_Toc130368787)

[11.26. Waiver 156](#_Toc130368788)

[11.27. Failure to Mitigate 156](#_Toc130368789)

[11.28. Lack of Damages 157](#_Toc130368790)

[11.29. Failure to State a Claim 157](#_Toc130368791)

[11.30. No Causation 158](#_Toc130368792)

[11.31. Justification 158](#_Toc130368793)

[11.32. Ratification 159](#_Toc130368794)

[11.33. Litigation Privilege (Civ. Code, § 47) 159](#_Toc130368795)

[11.34. Consent 160](#_Toc130368796)

[11.35. Necessity 160](#_Toc130368797)

[11.36. Private Necessity 161](#_Toc130368798)

[11.37. Equitable Easement 161](#_Toc130368799)

[12. STRATEGIC CONSIDERATIONS 162](#_Toc130368800)

[12.1. Statute of Limitations 162](#_Toc130368801)

[12.2. Applicability of Davis-Stirling Act 162](#_Toc130368802)

[12.3. Jurisdiction 163](#_Toc130368803)

[12.3.1. Arbitration 163](#_Toc130368804)

[12.3.2. Personal Jurisdiction 163](#_Toc130368805)

[12.3.3. Subject Matter Jurisdiction 164](#_Toc130368806)

[12.4. Standing 164](#_Toc130368807)

[12.5. Anti-SLAPP Analysis 166](#_Toc130368808)

[12.6. Pre-Filing Requirements 175](#_Toc130368809)

[12.7. Attorneys’ Fees and Costs 176](#_Toc130368810)

[13. FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS 177](#_Toc130368811)

# SUMMARY

Dr. Rashad Alta and Dr. Hadi Beeb are independent contractor associate dentists who provided clinical services at Lang Corp., a dental practice owned by Plaintiff Dr. William Lang. They have been named as defendants in a sweeping civil action brought by Dr. Lang and his professional corporation, which alleges that numerous former employees and contractors engaged in a conspiracy to defraud and financially harm the business and Dr. Lang personally.The Complaint asserts causes of action against Dr. Alta and Dr. Beeb for breach of fiduciary duty, conversion, constructive fraud, conspiracy, elder abuse, emotional distress, and unjust enrichment. Plaintiffs broadly claim that all “employee defendants” overbilled, accepted improper payments, and participated in a scheme orchestrated by the former office manager to embezzle funds and undermine the practice.From Dr. Alta and Dr. Beeb’s perspective, these claims are:Legally deficient, as the Complaint fails to allege specific facts connecting them to any wrongdoing;Procedurally improper, as it relies on vague group pleading and fails to differentiate between defendants;Factually unsupported, given their roles were limited to providing patient care as independent contractors, with no involvement in payroll, administrative, or financial operations.Both doctors have denied any involvement in the alleged misconduct. Through counsel, they have met and conferred with opposing counsel pursuant to Code of Civil Procedure § 430.41 and have informed Plaintiffs of their intent to file a demurrer under Code of Civil Procedure §§ 430.10(e) and (f), seeking dismissal of the claims for failure to state a cause of action and for uncertainty.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Rashad Altawaty and Hadi Shbeeb (“Client”)  DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” | N/A |
| Diane Swope ("D. Swope) | Defendant |
| Crystal Vazquez ("Vasquez") | Defendant |
| Stephanie Trefzger ("Trefzger") | Randy Swope ("R. Swope") |
| Randy Swope ("R. Swope") | Defendant |
| Yasamin Behbehani ("Behbehani") | Defendant |

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client closed escrow on the property. | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |

This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client’s litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS

|  |  |
| --- | --- |
| **Document Name**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Article IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| Purchase Agreement  Section 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK. |
| \* |  |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |

The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client’s case (e.g., binding arbitration, attorneys’ fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client’s case.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

— Will our potential Cross-Complaint argument re employment status defeat some of our argument regarding breach of duty of loyalty and breach of fiduciary duty?

This section of the LADD may be amended from time to time as new information becomes known.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional documents. This section of the LADD, however, may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

Client believes that one or more third parties has possession, custody, control, and/or knowledge of the following documents/information.

|  |  |  |
| --- | --- | --- |
| **Document/Information** | **Significance of the Document/Information** | **Identity of Third Party** |
| Minutes from the executive session dated 3/5/20 re Client’s disciplinary hearing. | These minutes, which are not available to non-directors outside the context of litigation, will show that the Board acted arbitrarily and capriciously in disciplining Client. | PMC Management |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |

The table above may be amended from time to time as new information comes to light.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# POTENTIAL CROSS-CLAIMS & THE STRENGTHS/WEAKNESSES OF EACH

## Unjust Enrichment

Elements—Unjust Enrichment (Quantum Meruit)

— Unjust Enrichment is technically not a cause of action or a remedy; it is a general principle that is synonymous with restitution. (*Rutherford Holdings LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 231.) Restitution through unjust enrichment requires (i) the receipt of a benefit and (ii) unjust retention of that benefit at the expense of another. (*Prakashpalan v. Engstom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1132.)

• Restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 388.)

Remedies—

— Plaintiff is entitled to the return of the thing taken or withheld or its monetary equivalent. (*Federal Deposit Insurance Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 346.)

Applicable Statute of Limitations

— The statute of limitations depends upon the underlying wrong. For example, in a case of unjust enrichment resulting from mistake or fraud, the three-year statute of limitations applies. (Code Civ. Proc., § 338(d); *Federal Deposit Insurance Corp. v. Dintino, supra*, 167 Cal.App.4th at 347.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *unjust enrichment*.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.)

Elements—Unfair Business Practices aka Unfair Competition

— A claim brought under Bus. & Prof. Code, § 17200 et seq. is really an unfair competition claim, and the statute is sometimes referred to as the “Unfair Competition Law.” (See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 558.) It is *not* the same thing as a common law unfair competition claim, the essence of which is the “the inequitable pirating of the fruits of another’s labor and then either ‘palming off’ those fruits as one’s own (deception) or simply gaining from them an unearned commercial benefit.” (*KGB, Inc. v. Giannoulas* (1980) 104 Cal.App.3d 844, 850; *Bank of the West v. Sup.Ct.* (1992) 2 Cal.4th 1254, 1263.)

— This statute is specifically intended to remedy anti-competitive activities (e.g., monopolies) and unfair (e.g., dishonest, deceptive, fraudulent, or discriminatory) business practices. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 179.)

— The passage of Prop. 64, however, greatly narrowed the use (i.e., abuse) of this cause of action. Prior to the passage of Prop 64 (i.e., November of 2004), standing to bring a claim under 17200 did *not* depend upon a showing of damages. (*Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 228.) After the passage of that proposition—which imposed a number of limitations on a private party’s standing to bring such a claim—a private party was required to (i) establish a loss or deprivation of money or property sufficient to qualify as injury in fact (i.e., an economic injury), and (ii) show that the economic injury resulted from an unfair business practice or false advertising. (*Kwikset Corp. v. Sup.Ct.* (2011) 51 Cal.4th 310, 322.)

— Today, a plaintiff wishing to make a claim for unfair business practices must prove that the defendant: (i) engaged in an unlawful, unfair, or fraudulent business practice/act; or (ii) used unfair, deceptive, untrue, or misleading advertising; or (iii) violated an act prohibited under Business and Professions Code section 17500 et seq. (See Bus. & Prof. Code, § 17200 et seq.; see also *Prata v. Superior Court* (2001) 91 Cal.App.4th 1128, 1146.) Plaintiff must not only also establish damages, but plaintiff must also prove that those damages were caused by the unfair competition at issue. (*Kwikset Corp. v. Sup. Ct., supra,* 51 Cal.4th at 322.)

• If plaintiff is arguing that defendant engaged in an “unlawful” business act or practice, plaintiff must (i) specify the unlawful conduct (which may be based on federal, state, or local law); (ii) show that defendant committed the unlawful business practice/conduct; and (iii) show that defendant unjustly received ill-gotten gains, including plaintiff’s money or property, as a result of the business practice/act. (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 676.)

• “Fraud” under Business and Professions Code section 17200 et seq. means conduct that is likely to deceive the public. (*Prata v. Superior Court, supra,* 91 Cal.App.4th at 1146.)

Remedies—

— Plaintiff may obtain injunctive relief to prevent the unfair competition and/or to order defendant to return any money or property that may have been unlawfully acquired. (Bus. & Prof. Code, §§ 17200, 17203.)

— Plaintiff is not, however, entitled to compensatory, actual, or punitive damages. (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 371.)

Applicable Statute of Limitations

— A claim for unfair business practices/competition must be brought within four years. (Bus. & Prof. Code, § 17208.)

• Any cause of action brought under 17200 is entitled to the benefit of this four-year statute of limitation. *Thus, an unfair competition claim can revive claims that are otherwise time-barred by shorter statute periods* (e.g., failing to pay wages is an unfair business practice so the four-year statute of limitations applies, not the three-year limitations). (*Cortez v. Purolator Air Filtration Production Co.* (2000) 23 Cal.4th 163, 178.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *unfair business practices*.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Violation of Labor Code Section 226.8 (Intentional Misclassification); Failure to Pay Wages (Labor Code Sections 201-204); Failure to Provide Accurate Wage Statements (Labor Code Section 226); Failure to Provide Meal and Rest Periods (Labor Code Sections 226.7, 512); Failure to Reimburse Business Expenses (Labor Code Section 2802)

Elements—Violation of Labor Code Section 226.8 (Intentional Misclassification); Failure to Pay Wages (Labor Code Sections 201-204); Failure to Provide Accurate Wage Statements (Labor Code Section 226); Failure to Provide Meal and Rest Periods (Labor Code Sections 226.7, 512); Failure to Reimburse Business Expenses (Labor Code Section 2802)

— Provide the elements AND statutory/case law of this cause of action.

— If you want, add snippets from other cases (see the examples above for ideas). Make sure to maintain the proper formatting and margins established in this document.

— If you have more than one cause of action to add, then cut and paste this one FIRST (before replacing the green highlights) as many times as there are causes of action to add. That way, you’ll be sure to keep everything consistent and standardized.

Remedies—

— What are the available remedies.

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— What is the statute of limitations for this claim?

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *violation of labor code section 226.8 (intentional misclassification); failure to pay wages (labor code sections 201-204); failure to provide accurate wage statements (labor code section 226); failure to provide meal and rest periods (labor code sections 226.7, 512); failure to reimburse business expenses (labor code section 2802)*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# POTENTIAL AFFIRMATIVE DEFENSES

Based upon the allegations made against Client thus far, and based upon the facts and evidence provided by Client and/or reflected in the documents the Firm has received and reviewed, the affirmative defenses discussed below appear to be applicable.

## BJR (Lamden)

Affirmative Defense—Business Judgment Rule

— The business judgment rule (“BJR”) is a court-made doctrine of judicial deference granted to boards of directors. In general terms, under the BJR, courts presume that directors have based their decisions on sound business judgment, and therefore interference by the court with a board’s decisions is something to be avoided. The BJR applies as long as the director’s decision was made in good faith and in the absence of a conflict of interest. (Corp. Code, §§ 309, 7231; *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1045.)

— The BJR was formally applied to boards in HOA cases by a famous case called *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249.[[1]](#footnote-3)

— This presumption granted under the BJR, however, can be overcome—i.e., directors won’t be shielded from personal liability—if the directors’ business decisions were made without reasonable inquiry, with improper motives, or as a result of a conflict of interest. (*Berg & Berg Enterprises, LLC v. Boyle*, *supra*, 178 Cal.App.4th at 1045.) In other words, to defeat the *Lamden* rule of judicial deference, a plaintiff will need to show that the board either acted in bad faith, failed to investigate, acted with self-interest, or acted outside the scope of its authority. In fact, notwithstanding the expansion of the BJR under *Lamden* referenced in the footnote below, other courts in California have limited *Lamden* in a variety of ways.

• In *Affan v. Portofino Cove Homeowners Assn.* (2010) 189 Cal.App.4th 930, the court recognized *Lamden’s* narrow scope and noted that while it was certainly a rule of deference in favor of HOA boards, it did NOT create “blanket immunity” for all board decisions. (*Id*., at 940.)

• In *Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111, the court described Lamden’s BJR as being in the nature of an affirmative defense (and held that a defense of good faith is necessarily factual in nature). Thus, under *Lamden*, that court reasoned that “judicial deference [was] owed only when it ha[d] been shown the Association acted after reasonable investigation, in good faith and with regard for the best interests of the community association and its members.” (*Id*., at 1122-1123.)

• The BJR under *Lamden* does *not* extend to legal questions that may involve the interpretation of an HOA’s CC&Rs—i.e., courts, not HOAs, decide *legal* questions. An association’s Board is afforded deference in determining how to make necessary repairs to common areas, it cannot substitute its discretion for that of a court deciding whether the association has an obligation to make repairs to common areas based upon statutory and contractual language. (*Dover Village Assn. v. Jennison* (2010) 191 Cal.App.4th 123.) *In other words, a board is offered protection under the BJR when it makes a choice, not when it ignores problems.*

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Statute of Limitations

Affirmative Defense—Statute of Limitations

The applicability of a statute of limitations defense depends upon the nature of the claims alleged. Based upon the claims aimed at Client, the following seem relevant:

— A claim for **breaching a fiduciary duty** must be brought within four years of the breach. (Code Civ. Proc., § 343; *William L. Lyon & Assoc, Inc. v. Sup. Ct.* (2012) 204 Cal.App.4th 1294, 1312.) If the breach of fiduciary duty stems from the defendant’s **fraud** (even if pleaded as breach of fiduciary duty), which has a statute of limitations of only three years, the claim must be brought within three years. (Code Civ. Proc., § 338; *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 691.)

— For **fraud** and **intentional misrepresentation**, three years. (Code Civ. Proc., § 338(d).)

— For **IIED**, two years. (Code Civ. Proc., § 335.1.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Unclean Hands

Affirmative Defense—Unclean Hands

— If the plaintiff’s bad conduct or bad faith causes/is related to his or her own underlying harm, then that plaintiff is barred from obtaining equitable relief—i.e., a plaintiff cannot take advantage of his or her own wrong. (Civ. Code, § 3517; *Lynn v. Duckel* (1956) 46 Cal.2d 845, 850.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Laches

Affirmative Defense—Laches

— A plaintiff’s claim is barred under the doctrine of laches if: (i) the plaintiff delayed in bringing his or her claim; (ii) the delay was unreasonable or inexcusable; and (iii) the defendant is prejudiced because of the delay. (*In re Marriage of Parker* (2017) 14 Cal.App.5th 681, 688.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Negligence (Comparative Fault)

Affirmative Defense—Comparative Fault

— The plaintiff’s own negligence may be used to proportionally reduce the defendant’s fault—i.e., liability is directly proportional to the negligence of each party. (*Burch v. CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 357-58.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Apportionment

Affirmative Defense—Apportionment

— In comparative fault actions for personal injury, property damage, or wrongful death, each defendant’s liability for non-economic damages are several only, not joint. (Civ. Code, § 1431.2.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Waiver

Affirmative Defense—Waiver

— As an affirmative defense, waiver is a type of estoppel. It prevents a plaintiff from relying on a right (typically contractual) that the plaintiff would otherwise have no problem being able to enforce. Often, such a waiver exists because the plaintiff did or said something that made the defendant believe that the provision in question was no longer in effect, and defendant relied upon that action/statement. (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Failure to Mitigate

Affirmative Defense—Failure to Mitigate

— A plaintiff has a duty to take steps to mitigate damages and is therefore not entitled to damages that could have been avoided had the plaintiff taken those steps. (*Agam v. Gavra* (2015) 236 Cal.App.4th 91, 111.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Failure to State a Claim

Affirmative Defense—Failure to State a Claim

— This affirmative defense applies if the plaintiff fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Justification

Affirmative Defense—Justification

— Because of the defendant’s legally protected interest, the defendant’s appropriate conduct was justified in protecting that interest. (*Richardson v. La Rancherita* (1979) 98 Cal.App.3d 73.) How this affirmative defense is applied, however, depends upon the nature of the claims alleged. For example, in response to an invasion of privacy claim, a defendant may be justified in violating a plaintiff’s privacy interest if the reason for the invasion outweighs the plaintiff’s privacy interest. (*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 573.) In an assault case, however, justification means that the defendant’s force was necessary to protect the defendant or others from wrongful injury. (Civ. Code, § 50.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Consent

Affirmative Defense—Consent

— The defendant is not liable for the plaintiff’s harm if the plaintiff consented to the conduct prior to the harm-producing conduct’s occurrence. (Civ. Code, §§ 3515, 3516; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 875; *Royer v. Steinberg* (1979) 90 Cal.App.3d 490, 498.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

This section of the LADD may be amended from time to time if new information/evidence comes to light that supports additional affirmative defenses.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STRATEGIC CONSIDERATIONS

## Statute of Limitations

This section is *not* intended to address whether or not the statute of limitations has run on a particular cross-claim that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential cross-claims discussed above.

Rather, this section of the LADD is intended only to highlight the earliest statute of limitations relevant to one of the available above-referenced cross-claims. If, therefore, Client wants to file a cross-complaint containing the applicable the causes of action discussed above, the action must be filed on or before **October 16, 2026\***.

## Jurisdiction

### Arbitration

Since Client did not execute any contract containing a binding arbitration provision, Client cannot be compelled to submit to binding arbitration, and any action filed against Client needs to be filed in the superior court of Orange County.

### Venue

Orange County is the correct venue for this lawsuit.

## Standing

Based upon the information/evidence that Client has provided thus far, it appears that the opposing party has standing to pursue each of the claims alleged against Client.

Based upon the information/evidence that Client has provided thus far, Client has standing to pursue every cross-claim described above against each of the intended defendants (excluding DOES, of course).

## Anti-SLAPP Analysis

Anti-SLAPP Overview—

— Strategic Lawsuits Against Public Participation (“SLAPP”) are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups’ financial resources, effectively preventing them from having their “day in court.” In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant’s acts made in furtherance of his or her right “to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).)

— The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys’ fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Statute’s Application in HOA-Related Cases—

— SLAPP suits can, and have, arisen in lawsuits by and against HOAs and HOA members. For example, a member might file a lawsuit against a director or committee member to pressure that person to change a critical vote regarding some issue or another. To prevent that type of abuse, and to discourage members from naming individual board members as defendants in litigation, courts have determined that the protections offered under the anti-SLAPP statute apply to various issues that arise in the HOA arena. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 130-36 [tree trimming dispute between adjacent homeowners that involved covenants to all lots in the community satisfied the definition of “public interest”]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476-77 [newsletter published to 3,000 residents of an HOA was a “public forum” even if access to the newsletter was selective and limited]; *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1409-10 [letters from attorney to management company and the HOA’s board regarding nuisance caused by an HOA member].)

— Obviously, however, not all HOA-related disputes are covered by the anti-SLAPP statute. (*Talega Maintenance Corp. v. Standard Pac. Corp.* (2014) 225 Cal.App.4th 722, 732 [holding that HOA proceedings must have a strong connection to governmental proceedings to qualify as “official proceedings”]; but see *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 540-46 [holding that HOAs “functioned similar to a quasi-governmental body” to constitute a “public forum”].)

Anti-SLAPP Test—

— The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn., supra,* 134 Cal.App.4th at 1466; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid*.; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)

— With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:

• Any statement (written or oral) or document generated in connection with (or as part of):

→ Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)

→ Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)

• Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)

• Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

— Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

## Pre-Filing Requirements (e.g., Notice or Mediation Requirements)

The facts of this case do not trigger any pre-filing requirements.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under Statutory Fee Entitlement - Elder Abuse (Welfare & Institutions Code Section 15657.5).

If new information comes to light that affects Client’s right to attorneys’ fees and costs, Client will be notified.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

We need to make sure we haven’t already run out the statute of limitations on the intentional misclassification claim for both Dr. Altawaty and Dr. Shbeeb.

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Although the *Lamden* court narrowed its holding to *maintenance-*related decisions*,* over the last two decades,others courts in California have applied the *Lamden* rule to non-maintenance decisions made by HOA boards/committees. (See, e.g., *Dolan-King v. Rancho Santa Fe Ass’n* (2000) 81 Cal.App.4th 965 [reviews of architectural applications given deference]; *Healy v. Casa del Rey Homeowners Ass’n* (2007) 153 Cal.App.4th 863 [board decision as to how and when to enforce governing documents given deference]; *Harvey v. Landing Homeowners Assn.* (2008) 162 CalApp.4th 809 [whether owners should be granted exclusive use of common areas given deference].) [↑](#footnote-ref-3)