

S293370

No. S _____
**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

MARIO DELIS, an individual,

Petitioner,

v.

SUPERIOR COURT OF
CALIFORNIA, COUNTY OF
KERN,

Respondent,

JEFFREY THORN;
JCM AG MANAGEMENT, LLC;
CANA ROSE REALTY
HOLDINGS, LLC; and
420KINGDOM LLC

Real Parties in Interest.

Fifth Appellate District
Court of Appeal No.:
F090025

Kern County Superior Court, Case No. BCV-21-102152
Hon. Thomas S. Clark

PETITION FOR REVIEW

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MARIO DELIS' PETITION FOR REVIEW

I. Issue presented

If a plaintiff dismisses all equitable claims to guarantee their constitutional right to a jury trial — a move this Court endorsed in *Raedeke v. Gibraltar Sav. & Loan Ass'n*¹ — may a defendant thwart this right by pleading equitable defenses and asking the trial court to bifurcate them?

II. Petition for Review

Plaintiff-Petitioner Mario Delis petitions this Court for review of the Fifth District Court of Appeal's unpublished decision summarily denying Delis' petition for writ of mandate.² The petition sought a writ directing the trial court to enter judgment on the jury's December 17, 2024 verdict in accordance with Civ. Proc. Code § 664, as requested in Delis' Renewed Motion for Judgment on the Verdict.³ The use of a summary denial does not insulate the rulings below from this Court's review,⁴ and the constitutional stakes are too high to let those rulings stand.

¹ *Raedeke v. Gibraltar Sav. & Loan Ass'n*, 10 Cal. 3d 665, 671–72, 675 (1974).

² Delis could not have sought rehearing because summary denials are immediately final. *See* Cal. R. Ct., Rules 8.268(a) and 8.490(b)(1)(A).

³ *See* 1 PA 155–80.

⁴ *See* Cal. Const. art. VI, § 12(b) (“The Supreme Court may review the decision of a court of appeal in any cause.”).

III. Why Review Should Be Granted

Constitutional rights — including the fundamental right to a jury trial in actions at law⁵ — can erode over time as litigants find creative ways to evade the precedents that protect them. One recurring threat to the constitutional right to a jury trial involves defendants’ improper requests that trial courts act as factfinders.⁶

This Court should clarify its decisions in *Raedeke v. Gibraltar Sav. & Loan Ass’n* (1974),⁷ *S. Pac. Land Co. v. Dickerson* (1922),⁸ and *Hughes v. Dunlap* (1891)⁹ to hold that defendants cannot thwart jury-trial rights in purely legal actions by pleading equitable defenses and asking the trial court to decide them in a bench trial. The trial court’s ruling creates an exception to *Raedeke*, allowing defendants to curtail plaintiffs’ jury rights simply by pleading equitable defenses to legal claims.

In this action at law, Delis — relying on this Court’s guidance in *Raedeke* — dropped all equitable claims before trial to guarantee his right to a jury determination of all facts.¹⁰ On December 17, 2024, after a 34-day nonbifurcated jury trial, the jury rewarded his confidence in the system with a \$9.9 million

⁵ See Cal. Const. art. I, § 16; *Darbun Enters., Inc. v. San Fernando Cmty. Hosp.*, 239 Cal. App. 4th 399, 408 (2015).

⁶ See, e.g., *Darbun*, 239 Cal. App. 4th at 411–12 (holding that a trial court violated a party’s jury-trial right by acting as a factfinder on a legal claim).

⁷ 10 Cal. 3d 665, 671–72, 675 (1974).

⁸ 188 Cal. 113, 115–17 (1922).

⁹ 91 Cal. 385, 390 (1891).

¹⁰ 1 PA 30–33. See *Darbun*, 239 Cal. App. 4th at 411–12 (describing the plaintiff’s right to make an election of claims under *Raedeke*); *Raedeke*, 10 Cal. 3d at 675.

verdict.¹¹ But the trial court has refused to enter judgment. Instead, after Defendant Jeffrey Thorn lost, the court retroactively bifurcated some of Thorn’s equitable defenses and has set these aside for a bench trial in which the trial court will act as factfinder.¹²

The trial court’s refusal to enter judgment on Delis’ jury verdict — an act that Civ. Proc. Code § 664 requires within 24 hours of the verdict — has effectively nullified it. Delis cannot enforce a judgment that the trial court will not enter; nor can he file post-judgment motions, conduct post-judgment discovery, or alert third parties to his rights as a judgment creditor. Rather than be allowed to pursue finality and be made whole after more than four years of litigation, Delis is being forced to undergo an unconstitutional bench trial despite having dropped his equitable claims before trial precisely to eliminate that possibility.

The trial court’s decision sets a dangerous precedent that spans across substantive areas of law and stymies access to civil justice. Defendants routinely plead equitable defenses (e.g., laches, unclean hands, equitable estoppel, waiver) in civil-rights, tort, and employment disputes. If the trial court’s ruling stands, any defendant can circumvent an adverse jury verdict by requesting a bench trial on equitable defenses to legal claims.

* * *

¹¹ See 5 PA 763–65, 768–70, 772–73, 777, 779–80 (verdict form). This \$9.9 million figure includes automatic trebling of the civil-theft verdict. See *Siry Inv., L.P. v. Farkhondehpour*, 13 Cal. 5th 333, 354 (2022).

¹² See 13 PA 2603–08 (May 27, 2025 ruling denying Delis’ Renewed Motion for Judgment on the Verdict).

This Court held in *Raedeke* that plaintiffs who bring only legal claims to trial are guaranteed a jury trial.¹³ If the plaintiff dismisses all equitable claims before trial (as Petitioner Delis did), courts may not bifurcate equitable issues or engage in judicial factfinding.¹⁴ In such purely legal actions, the jury decides all facts; the trial court’s only role is to “pronounc[e] the judgment upon their verdict.”¹⁵

But may a defendant circumvent this rule and thwart a plaintiff’s jury-trial right through the routine act of pleading equitable defenses? While at least three appellate decisions shed light on this question by implying that affirmative defenses do

¹³ See *Raedeke*, 10 Cal. 3d at 671–72, 675.

¹⁴ See *Dickerson*, 188 Cal. at 115 (noting that “in so far as the action is legal, the verdict of the jury is conclusive [W]here a party is entitled to a jury as a matter of right, the court is without authority to enter a judgment contrary to the verdict”); *Hughes*, 91 Cal. at 390 (stating that deciding “issues of fact” is “the province of a jury in legal actions”); *Raedeke*, 10 Cal. 3d at 674–75 (holding that the trial court erred “in entering its own findings” where the “plaintiffs were entitled to a jury determination of the issues”).

¹⁵ *Hughes*, 91 Cal. at 390.

not change the character of an action as legal or equitable,¹⁶ this Court has not specifically addressed that issue. (*Raedeke* says that plaintiffs in purely legal actions are entitled to jury trials as a matter of right, but does not mention defenses.)

The answer determines the scope of a fundamental constitutional right¹⁷ — one “not to be narrowly construed”¹⁸ — and will recur as defendants weaponize equitable defenses to evade jury verdicts. The denial of a plaintiff’s jury-

¹⁶ *See, e.g., Ford v. Super. Ct.*, 176 Cal. App. 2d 754, 759 (1959) (holding that a defendant’s assertion of equitable defenses to a legal claim “will not change it to an action in equity” or warrant bifurcation); *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App. 4th 612, 617, 622–23 (1992) (concluding that the “gist of [the plaintiff]’s action was legal” even though the defendant asserted an equitable defense to a legal claim, and affirming the trial court’s decision to submit an equitable defense to the jury because “all of [the defendant]’s theories in support of the [] defense were intertwined with the parties’ legal causes of action”); *Dipirro v. Bondo Corp.*, 153 Cal. App. 4th 150, 185–86 (2007) (allowing a legal affirmative defense to an equitable claim to be tried by the court because the defense “was not a separate legal claim or cause of action,” but instead “merely an affirmative defense within that [equitable] action”).

¹⁷ *See* Cal. Const. art. I, § 16 (“Trial by jury is an inviolate right and shall be secured to all.”); *accord* Civ. Proc. Code § 631(a). *See also, e.g., EpicentRx, Inc. v. Super. Ct.*, 18 Cal. 5th 58, 78 (2025) (“California public policy supports the right to trial by jury.”).

¹⁸ *People v. One 1941 Chevrolet Coupe*, 37 Cal. 2d 283, 300 (1951).

trial right is “a miscarriage of justice”¹⁹ and reversible per se.²⁰ The way in which Delis’ jury-trial right is being denied — by delaying finality and multiplying proceedings through a post-verdict bifurcation and bench trial — would render vulnerable litigants unable to exercise their jury-trial rights.²¹

This Court should grant review and hold that the right to a jury trial turns entirely on the plaintiff’s claims, not on defenses to those claims. If, as here, the plaintiff brings only legal claims to trial — making the action one entirely at law, not equity — then the plaintiff is entitled to a jury trial regardless of any equitable defenses the defendant raises.

To be clear, trial courts may often decide equitable claims and defenses. In a purely legal action like this one, however — when the plaintiff, making an election of claims under *Raedeke*,²² dismisses all equitable claims before trial to preserve the right to a jury trial — the plaintiff has a right to have a jury determine all facts. The court may decide equitable defenses *based on facts found by the jury*,²³ or the jury may decide them directly;²⁴ but the

¹⁹ *Dickerson*, 188 Cal. at 118.

²⁰ *See Rincon EV Realty LLC v. CP III Rincon Towers, Inc.*, 8 Cal. App. 5th 1, 19 (2017); *Darbun*, 239 Cal. App. at 411; *see also One 1941 Chevrolet Coupe*, 37 Cal. 2d at 300 (“The denial of a trial by jury to one constitutionally entitled thereto constitutes a miscarriage of justice and requires a reversal of the judgment.”).

²¹ *See* Cal. R. Ct., Rule 8.500(b)(1).

²² *See* 10 Cal. 3d at 671–72, 675.

²³ *See Hughes*, 91 Cal. at 390 (noting that it “is the province of a jury in legal actions” to decide factual issues that establish “many kinds of equitable remedies”).

²⁴ *See Unilogic*, 10 Cal. App. 4th at 617, 622–23 (affirming the trial court’s decision to submit an equitable unclean hands defense to the jury).

trial court lacks authority to vary or augment the jury’s findings.²⁵

This Court should grant review to clarify these points and ensure that future litigants do not win jury trials only to see the verdict nullified by a judicial refusal to enter judgment and subjection of the parties to a post-verdict bench trial.

IV. Factual and Procedural Background

Plaintiff-Petitioner Mario Delis sued his former business partner, Jeffrey Thorn, and Thorn’s affiliated companies for breach of contract, breach of fiduciary duty, and civil theft arising from their cannabis business partnership.²⁶ Thorn raised various defenses, pleading identical facts in support of each.²⁷

Before trial, the court — citing *Raedeke* — rejected Thorn’s request to bifurcate equitable issues because Delis was bringing only legal claims to trial.²⁸ That unified, nonbifurcated jury trial resulted (in December 2024) in a verdict for Delis.²⁹ But rather than entering judgment on the jury’s verdict, the trial court retroactively bifurcated several of Thorn’s equitable defenses. It plans to determine these defenses, with itself acting as factfinder, in a bench trial.³⁰

²⁵ By contrast, in a mixed law-equity equity action (where the plaintiff brings equitable claims to trial), the court may bifurcate equitable issues for judicial determination.

²⁶ See generally 3 PA 399–513 (Delis’ Fourth Am. Compl.).

²⁷ See 3 PA 517–71 (Defs.’ Fourth Am. Answer).

²⁸ See 1 PA 80 (“With [Delis’] dismissal of the equitable causes of action, the gist of this action changed and has now become an action for damages.”); 1 PA 82 (“After Reconsideration, Bifurcation is Denied.”).

²⁹ See 5 PA 763–65, 768–70, 772–73, 777, 779–80 (verdict form).

³⁰ See 3 PA 601–05 (Feb. 27, 2025 ruling).

A more detailed procedural history follows.

* * *

Before trial, Thorn moved to bifurcate the case's equitable issues, and the trial court initially granted that motion over Delis' opposition.³¹ To preserve his right to a jury trial, Delis dismissed all his equitable claims (invoking *Raedeke*) and moved for reconsideration.³² The trial court granted reconsideration and vacated its bifurcation order, recognizing that once Delis' equitable claims were dismissed, "the gist of this action changed and has now become an action for damages."³³ Its order was unequivocal: "After Reconsideration, Bifurcation is Denied."³⁴

The case proceeded to a unified 34-day jury trial. At no point did the court or Thorn suggest that the case remained bifurcated or that Thorn had reserved equitable defenses for later adjudication.³⁵ Thorn presented his full case to the jury, introducing all his evidence,³⁶ arguing all his defenses on the

³¹ See 3 PA 581–84 (trial court's later-superseded ruling on Thorn's motion to bifurcate); 13 PA 2612–26 (Delis' opposition).

³² See 1 PA 32 (voluntary dismissal); see also *id.* at 13–28.

³³ See 3 PA 593–97 (Sept. 26, 2024 ruling).

³⁴ *Id.* at 596.

³⁵ The sole mention of bifurcation at trial related to punitive damages. The court described the trial as nonbifurcated. See 7 PA 1284 ("THE COURT: [CACI] 3948 is if we had a bifurcated trial, so I pulled that one.").

³⁶ See 13 PA 2587 ([Thorn's counsel]: "I put everything on so I couldn't hold back evidence . . . [I] put it all on at once.").

merits,³⁷ and requesting instructions and verdict forms on the equitable defenses of waiver and mistake.³⁸

The court dismissed Thorn’s laches and collateral estoppel defenses³⁹ and addressed his remaining equitable defenses during the hearing on Delis’ motion for a directed verdict and the three-day charging conference — all without ever mentioning bifurcation.⁴⁰ The court also removed the verdict form’s reference to mistake (over Thorn’s objection)⁴¹ and directed Thorn to provide authority supporting his unclean-hands defense.⁴²

The jury returned a verdict for Delis on December 17, 2024. It found Thorn liable for breach of contract, breach of fiduciary duty, and civil theft, while rejecting Thorn’s waiver and novation defenses.⁴³ It was only after losing at trial that Thorn first asserted — in opposing Delis’ motion for entry of

³⁷ See, e.g., 2 PA 307–37 (Dec. 5, 2024 Tr.) (argument on Delis’ motion for a directed verdict targeting all Thorn’s defenses); 2 PA 328–29 (Dec. 5, 2024 Tr. 59:23–60:24) (“As to the equitable estoppel, we’ve proved all the elements These are all disputed factual issues for the jury.”).

³⁸ See 5 PA 780 (Verdict Form, ¶ 54); 3 PA 614 (Dec. 16, 2024 clerk’s minutes) (“Court states . . . that jurors are to disregard question[s] #51 and #52 [Mistake], over the objection of defense counsel.”).

³⁹ See 2 PA 307–09 (Dec. 5, 2024 Tr. 38:7–40:10) (rulings on which affirmative defenses will be dismissed); 3 PA 610 (Dec. 5, 2024 clerk’s minutes) (adopting the tentative as the ruling).

⁴⁰ See 2 PA 309–37 (Dec. 5, 2024 Tr.); 5 PA 838–45, 865–67 (Dec. 6, 2024 Tr.).

⁴¹ See 3 PA 614 (Dec. 16, 2024 clerk’s minutes).

⁴² See 2 PA 308, 331 (Dec. 5, 2024 Tr. 39:22–24 & 62:16–28).

⁴³ See 5 PA 763–65, 768–70, 772–73, 777, 779–80 (verdict).

judgment — that he had reserved certain equitable defenses for a bench trial.⁴⁴

On May 27, 2025, the trial court denied Delis’ Renewed Motion for Judgment on the Verdict.⁴⁵ Instead of entering judgment on the jury verdict, the court retroactively bifurcated four of Thorn’s equitable defenses and ruled that it would decide these in a bench trial.⁴⁶ This decision reversed the court’s pretrial order denying bifurcation (without saying so).⁴⁷ The court reached this conclusion by sua sponte consulting pretrial briefs filed nine months earlier — briefs neither party had cited in their motions or at the hearing.⁴⁸

The Court of Appeal declined (without explanation) to issue a writ directing the trial court to enter judgment in accordance with *Raedeke*.⁴⁹

V. Whether defendants can secure bifurcation of equitable issues by pleading equitable defenses to legal claims is an important and recurring issue affecting the scope of the constitutional jury right.

Plaintiffs who bring only legal claims to trial are entitled to jury trials.⁵⁰ The California Constitution guarantees this right

⁴⁴ See 1 PA 105 (Thorn’s opposition brief).

⁴⁵ See 13 PA 2603–08 (May 27, 2025 ruling).

⁴⁶ See *id.*

⁴⁷ Compare 13 PA 2603–08 (post-verdict order bifurcating equitable defenses) with 3 PA 593–97 (operative pretrial order holding that the trial would not be bifurcated).

⁴⁸ See 13 PA 2605–06, ¶¶ 3–7; see also 13 PA 2604 (list of sources considered by court, omitting any mention of the pretrial briefs cited in its ruling).

⁴⁹ See Appendix 1 (Sept. 24, 2025 order).

⁵⁰ See *Raedeke*, 10 Cal. 3d at 671–72, 675.

and public policy supports it.⁵¹ The decisions below allow defendants to infringe that right by raising equitable defenses and asking that they be bifurcated for judicial factfinding.

A. Review is warranted to clarify that *Raedeke* protects a plaintiff’s right to a jury trial in purely legal actions regardless of any equitable defenses.

Without this Court’s intervention, defendants like Thorn will take advantage of a phantom exception to *Raedeke* that undermines that case’s protection of constitutional jury-trial rights. Defendants may now — if the trial court’s decision is allowed to stand — thwart those rights just by pleading equitable defenses to legal claims and asking that these defenses be bifurcated with the court acting as factfinder.

This Court made clear in *Raedeke* that when, as here, a plaintiff brings only legal claims to trial, they are “entitled to a jury determination of the issues” as a matter of right.⁵² Where “a party is entitled to a jury as a matter of right, the court is without authority to enter a judgment contrary to the verdict.”⁵³

Raedeke establishes a bright-line rule that plaintiffs may entirely safeguard their right to a jury trial by seeking only legal relief. But the rulings below show that defendants have found a way to circumvent *Raedeke*’s fortifications. If California’s constitutional right to a jury trial is to remain inviolate and meaningful, defendants must not be allowed to manipulate the scope of that right by pleading equitable defenses.

⁵¹ See Cal. Const. art. I, § 16; Civ. Proc. Code § 631(a); *EpicentRx, Inc.*, 18 Cal. 5th at 78.

⁵² *Raedeke*, 10 Cal. 3d at 671–72, 675; see also *Dickerson*, 188 Cal. at 116.

⁵³ *Dickerson*, 188 Cal. at 116 (citations omitted)

The constitutional stakes make this Court’s review necessary.⁵⁴ Litigants are forced to make strategic choices about which claims to develop and bring to trial; they must have clear guidance on the consequences of bringing and dismissing claims. Delis relied on this Court’s guidance in *Raedeke* in deciding to drop his equitable claims before trial to guarantee his right to a jury determination of all facts.⁵⁵ The rulings below undermine that guidance by allowing judicial factfinding relating to equitable defenses even in a pure action at law.

This case shows an urgent need for this Court to clarify the scope of *Raedeke* and confirm that defendants cannot circumvent it just by pleading equitable defenses.

B. The question of when trial courts may bifurcate equitable defenses is a recurring legal issue that warrants institutional review.

The jury decides all facts when an action is purely legal. Once Delis voluntarily dismissed his equitable claims to preserve his right to a jury trial,⁵⁶ the trial court lacked authority to act as an equitable factfinder.⁵⁷

⁵⁴ See Cal. R. Ct., Rule 8.500(b)(1).

⁵⁵ 1 PA 30–33. See *Darbun*, 239 Cal. App. 4th at 411–12; *Raedeke*, 10 Cal. 3d at 675.

⁵⁶ See *Raedeke*, 10 Cal. 3d at 671–72; accord, e.g., *Darbun*, 239 Cal. App. 4th at 411 (“[A plaintiff] may preserve its right to a jury trial by abandoning its request for equitable relief and seeking only damages.”).

⁵⁷ See *Darbun*, 239 Cal. App. 4th at 411–12 (recognizing that, under *Raedeke*, a plaintiff’s abandonment of their equitable claims “eliminate[s] the court’s right to act as the equitable fact finder”); *Raedeke*, 10 Cal. 3d at 675; *Dickerson*, 188 Cal. at 117; *Hughes*, 91 Cal. at 390.

This petition presents an opportunity for this Court to hold that the presence of an equitable defense to a legal claim does not transform the nature of the action.⁵⁸ Otherwise, defendants could limit plaintiffs' jury rights just by pleading equitable defenses, as defendants routinely do.

If the trial court were to find facts establishing an equitable defense to a legal claim on which the jury already returned a verdict, the court's factfinding would interfere with that verdict, violating the plaintiff's constitutional right to have a jury decide the defendant's liability in a purely legal action.⁵⁹

Juries may find facts relating to equitable defenses or rule on them directly if asked to do so, as Thorn's submission of his waiver defense to the jury shows.⁶⁰ While Thorn sought and obtained a jury ruling on waiver, he chose not to seek jury instructions or special verdict forms on other equitable defenses. If defendants fail to seek jury instructions on a defense, they forfeit it⁶¹ and leave the trial court with no available findings that could satisfy the defense's elements. The law forbids the trial court from filling this gap with post-trial factfinding. Defendants

⁵⁸ See, e.g., *Unilogic*, 10 Cal. App. 4th at 622–23.

⁵⁹ See, e.g., *Raedeke*, 10 Cal. 3d at 675; *Dickerson*, 188 Cal. at 116, 118.

⁶⁰ See *Unilogic, Inc.*, 10 Cal. App. 4th at 622–23 (holding that the trial court properly submitted an equitable defense to the jury).

⁶¹ Cf., e.g., *Hurley v. Dep't of Parks & Recreation*, 20 Cal. App. 5th 634, 654–56 (2018) (holding that a party forfeited instructional-error arguments by failing to timely object or request additional or clarifying instructions, and noting the presumption that a party “adopt[s] a deliberate trial strategy” by doing so) (citing cases).

must not get second chances to persuade a factfinder through post-verdict bench trials in actions at law.

C. The trial court’s decision to retroactively bifurcate the trial without requiring a new-trial motion also provides an opportunity to reaffirm the century-old *Hughes* and *Dickerson* decisions.

The trial court’s decision to bifurcate some of Thorn’s equitable defenses retroactively, after Thorn submitted his equitable waiver defense to the jury and lost, also circumvented this Court’s decisions in *Dickerson* and *Hughes*. These century-old precedents state that a new-trial motion is the only way for litigants to challenge jury verdicts.⁶²

This case presents an opportunity to reaffirm those precedents, ensuring that future litigants are not trapped in an irregular procedural limbo where they have won jury verdicts but had them nullified by a trial court’s refusal to enter judgment.

The trial court’s approach encourages inefficient sandbagging and gives defendants two bites at the apple: following Thorn’s lead, they may avoid seeking jury instructions on certain defenses, then ask the court to resurrect them in a bench trial if they lose the jury trial.

Such strategic but inefficient litigation behavior, if tolerated, will metastasize. The trial court’s decision teaches that defendants who quietly hold equitable defenses in reserve rather

⁶² See *Dickerson*, 188 Cal. at 117 (stating that there is “no other means” besides a new-trial motion “for the correction of any error that may have been committed in submitting an issue to the jury”); *Hughes*, 91 Cal. at 388 (holding that the trial court “erred in disregarding the verdict of the jury and setting it aside without the proceeding of a motion for a new trial”).

than submitting them to a jury, far from waiving those defenses, may resurrect them to get a mulligan.

VI. Conclusion

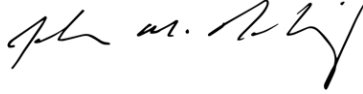
In purely legal actions, the plaintiff is entitled to a jury trial on all issues, rendering the trial court “without authority to enter a judgment contrary to the verdict”⁶³ and limiting its role to entering judgment on the verdict.⁶⁴ So says this Court’s precedent. But the trial court’s refusal to enter judgment on the jury’s verdict implies that a defendant can sidestep that precedent and secure a bench trial by pleading equitable defenses. Institutional review is warranted to clarify that the right to a jury trial turns entirely on whether a *plaintiff’s claims* are legal or equitable, without regard to defenses.⁶⁵

⁶³ *Dickerson*, 188 Cal. at 116.

⁶⁴ *See id.*; *Hughes*, 91 Cal. at 390 (recognizing that, in legal actions, the trial court’s role is limited to “pronouncing the judgment upon [the jury’s] verdict”).

⁶⁵ *See* Cal. R. Ct., Rule 8.500(b)(1).

Date: October 6, 2025
Respectfully submitted,



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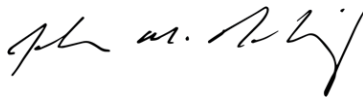
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CERTIFICATE OF COMPLIANCE

Counsel of Record certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed Petition for Review was produced using 13-point or greater Roman type, including footnotes, and contains 3,958 words, which is fewer than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: October 6, 2025

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IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

MARIO DELIS,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
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Respondent;

JEFFREY THORN et al.,

Real Parties in Interest.

F090025

(Kern Super. Ct. No. BCV-21-102152)

ORDER

BY THE COURT:*

The “Petition for Writ of Mandate ...,” filed on June 26, 2025, is denied.



Detjen, A.P.J.

* Before Detjen, A.P.J., Snauffer, J. and, Fain, J.†

† Judge of the Fresno Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Superior Court of California
County of Kern
Bakersfield Department 17

Date: 05/27/2025

Time: 8:00 AM - 5:00 PM

BCV-21-102152

DELIS VS THORN ET AL

Courtroom Staff

Honorable: Thomas S. Clark

Clerk: Linda K. Hall

**NATURE OF PROCEEDINGS: RULING RE; RENEWED MOTION FOR JUDGMENT ON THE VERDICT HEARD ON
05/08/2025**

The Court reaches the following decision:

Please see attached ruling regarding Renewed Motion for Judgment on the Verdict heard on 05/08/2025.

Case status conference set for 07/11/2025, at 8:15 a.m., in Department 17.

Copy of ruling emailed to all counsel as stated on the attached declaration.

Minute order notice.

Copy of minute order sent based on Certificate of Service.

FUTURE HEARINGS:

July 11, 2025 8:15 AM Case Status Conference

Clark, Thomas S.

Bakersfield Department 17 located at 1415 Truxtun Avenue

Sheriff, Deputy

RULING
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DELIS VS THORN ET AL

BCV-21 102152

Plaintiff's "Renewed" Motion for Judgment on the Verdict came on for continued hearing on the 8:30 a.m. calendar on 5-8-25 in Dept. 17 (after having been continued from 4-16-25. Plaintiff Mario Delis appeared with his counsel, Ryan McCarl. Adam Burch also appeared remotely for Plaintiff. Craig Lynch appeared for Defendant.

At the earlier hearing, the Court had expressed a tentative ruling that this motion was, in effect, a motion to reconsider a motion previously denied on 2-27-25. When Plaintiff's counsel argued that this motion was, in fact, a distinctly different motion seeking different relief, the Court continued the hearing to 5-8-25 and requested additional briefing.

Prior to the hearing, the Court considered the following briefs and pleadings filed by Plaintiff: (1) 12-19-24 brief; (2) 1-23-25 Request for Judicial Notice; (3) 1-23-25 Declaration of Ryan McCarl; (4) 1-23-25 brief; (5) 2-7-25 brief; (6) 2-7-25 Request for Judicial Notice; (7) 2-27-25 transcript; (8) 2-27-25 Minutes; (9) 3-24-25 Renewed Motion; (10) 3-24-25 Request for Judicial Notice; (11) 4-16-25 Reply; and (12) 4-16-25 Request for Judicial Notice.

The Court takes judicial notice of (1) the official signed verdict forms as returned by the jury on 12-17-24; (2) 12-5-24 Clerk's Minutes; (3) Thorn's Cross-Complaint; (4) this Court's Anti-SLAPP Order issued on 3-11-22; (4) Fourth Amended Complaint; (5) Defendants' Answer to the Fourth Amended Complaint; (6) 9-26-24 Ruling on Plaintiffs' Motion for Judgment on the Pleadings, etc.; (7) Defendants' dismissal of cross-claims against Nature & Life Farms, LLC; and (8) final jury instructions read to and provided to jurors.

The Court also considered the following briefs and pleadings filed by Defendant: (1) 12-30-24 Objections to Form of Judgment; (2) 2-3-25 Declaration of Craig Lynch; (3) 12-18-24 Minutes; (4) 2-14-24 Minutes; (5) 4-3-25 Defendants' Opposition to Plaintiff's Renewed Motion; (6) 4-4-25 Declaration of Craig Lynch.

At the 5-8-25 hearing, the Court announced a tentative decision to consider the instant motion to be a separate new motion (as opposed to a motion to reconsider a previously-heard motion); and to deny the motion on various grounds.

After extensive argument, discussion, and citation to the record, the Court took the matter under submission.

The Court makes the following findings:

1. Although the instant motion makes many of the same arguments and the issues are virtually identical, the relief sought by this motion is focused on affirmative defenses while the relief sought by the previous motion was focused more on a cause of action pled by the same parties in a cross-complaint. The Court draws a very narrow distinction and holds that this motion does not seek reconsideration of a previously denied motion, seeks different relief from the previously-denied motion and is not subject to CCP section 1008.
2. In their Answer, Defendants pled at least 4 affirmative defenses which all parties agree are equitable defenses: Laches (2nd Affirmative Defense); Equitable Estoppel (6th Affirmative Defense); Unclean Hands (10th Affirmative Defense) and Mistake (11th Affirmative Defense).
3. From the inception of pretrial motions both parties have understood that legal and equitable issues would be tried separately.
4. The issue of bifurcation was first addressed by the Court in response to Defendants' motion to "sever and bifurcate." Plaintiffs did not oppose severance and bifurcation. Plaintiffs DID OPPOSE Defendant's request that the Court try first "all equitable claims, cross-claims and **defenses.**" Had we tried these issues first, the case would have ended with the jury verdict.
5. Plaintiffs opposed the request that the Court try equitable claims and defenses first and argued that these issues should be tried *after* the jury verdict so that the Court could treat "the jury's findings as advisory with respect to **any remaining equitable claims or defenses.**" [emphasis added]

6. Although the Court overruled Plaintiffs' opposition and scheduled the trial of the equitable claims and defenses first before the jury trial, Plaintiffs achieved their desired result, by promptly dismissing all of their equitable causes of action and asking the Court to then reconsider the order in which the two phases would be tried. In support of their request that the Court again consider reversing the order and reserve trial of equitable claims or defenses until after the jury trial, Plaintiffs argued "if any **equitable issues** remain after the jury trial because of Defendants' **defenses** or cross-claim the Court can rule on those **after** having the benefit of hearing the relevant evidence presented over the course of the jury trial." [emphasis added] (Plaintiffs' memo of P & A's, pg. 3, lines 7-8). This is an endorsement of Defendants' position in the instant motion. Plaintiffs were aware at the time they requested the Court to defer hearing equitable issues that those issues would include affirmative defenses.
7. Defendants opposed Plaintiffs' request that the Court reverse the order of trial. Plaintiffs acknowledged that they understood Defendants' position which was that "Courts should still precede the jury trial with a bench trial on equitable issues because some of his affirmative defenses...are allegedly equitable" but argued that those issues still needed to be deferred because "Defendants **cannot erase plaintiffs' jury rights** by injecting equitable issues into a case." [emphasis added] (Plaintiffs' Memo of P & A's, pg. 5, lines 3-5, pg. 6, lines 6-7). **With full knowledge that the effect would be deferral of the court trial on equitable defenses** until after the jury trial, Plaintiffs were successful in getting this Court to reverse the order of trial of the two phases---a position they now criticize.
8. After successfully convincing the Court to move the trial of the equitable affirmative defenses from before the jury trial to after the jury trial, and after successfully convincing the Court to deprive Defendants of the trial on affirmative defenses already set prior to the jury trial, Plaintiffs now seek to deprive Defendants of that trial by arguing that a trial on affirmative defenses after the jury trial is impermissible because it would allow the courts to change a jury's verdict.

9. Equitable defenses stand on their own. If an equitable defense provides a complete defense, it does not “change” the jury’s verdict. The Court simply applies the facts and the law of the affirmative defense to the jury’s findings (facts and law which the jury did not have an opportunity to consider). While Plaintiffs’ argument may appear at first glance to have some surface logic, case law explains why this is not the case.

10. One need only look at the case of ***Hoopes v. Dolan*** (2008) 168 Cal.App.4th 146, to see that a Court may find the existence of facts constituting a legal defense and may then apply that defense after the fact to a jury verdict. The ***Hoopes*** case was cited in Defendants’ opposition to this motion and the factual parallels were recited in excruciating detail there. In short, after the jury awarded Plaintiff Hoopes over \$57,000 in damages against Defendant Dolan for breach of contract, fraud and trespass, the Court found that Plaintiff Hoopes was equitably estopped from asserting his claims for breach of contract, fraud and trespass because he had taken no action for years to contest the issues he now complained of. The Court of Appeal affirmed and the Supreme Court denied review. What the appellate court said is as follows:

“We conclude that the trial court erred in disregarding the jury’s verdict when fashioning equitable relief founded on the same evidence and the same operative facts as the verdict. ***However***, we also conclude that the defense of equitable estoppel was a matter within the exclusive province of the trial judge and that it raised legal and factual issues undecided by the jury. While the trial judge should have considered the equitable defense first, and thus avoided an unnecessary jury trial, the order of trial was within the court’s discretion and did not divest the judge of his duty to determine applicability of equitable estoppel. ***The judge’s ultimate resolution of that dispositive issue in defendants’ favor, supported by substantial evidence, must be affirmed.*** ***Hoopes v. Dolan*** at pgs. 150-151 [emphasis added]

11. As recognized by the appellate court in ***Hoopes v. Dolan***, it would have been better to try the equitable defenses before the jury trial. The equitable defenses were scheduled to be tried prior to the jury trial. Having successfully deprived Defendants of that opportunity by filing a motion for reconsideration and arguing to the Court that it would be better to apply

the jury findings to the equitable defenses, Plaintiffs are estopped from depriving Defendants of a trial on these defenses altogether by taking a contrary position on this motion.

12. As a separate ground, the Court has the authority, as recognized by *Hoopes v. Dolan* and other cases, to try the equitable defenses and to apply its determination to the jury's findings, notwithstanding the fact that a jury has rendered a verdict.

For the foregoing reasons, Plaintiffs' Renewed Motion for Judgment on the Verdict is DENIED.

Trial on the equitable issues and defenses will proceed before entry of judgment.

FURTHER STATUS CONFERENCE

To resolve this case and get to the judgment stage, it is still necessary to schedule and conduct the trial of the second phase, dealing with the equitable defenses.

The Court does not know (but can make assumptions about) whether the parties are ready to argue the second phase, or present additional evidence and subsequent briefing.

In any event, there is no reason to further delay proceedings.

The Court schedules a further Status Conference for 07/11/2025, at 8:15 a.m., in Dept. 17.

Subjects will include:

1. Scheduling a trial/hearing date or Final Argument Date.
2. Setting a briefing schedule (if desired).
3. Discuss any other related matters counsel wishes to bring up.

These Minutes shall memorialize the Court's rulings effective as of 5-27-25.

The Clerk is directed to give notice by serving a copy of the Minutes on the parties.

CERTIFICATE OF SERVICE

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is 1415 Truxtun Avenue Bakersfield, CA 93301; 1415 Truxtun Avenue Bakersfield, CA 93301, that I served the **Minutes dated May 27, 2025** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: May 27, 2025

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tara Leal
CLERK OF THE SUPERIOR COURT

Date: May 27, 2025

By: Linda Hall
Linda Hall, Deputy Clerk

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Proof of Service by:
✓ US Postal Service
Federal Express

I, Kristina Homa, declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 410, Los Angeles, CA 90017;

On 10/6/2025 declarant served the within: Petition for Review
upon:

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The Honorable Thomas S. Clark
SUPERIOR COURT OF CALIFORNIA
County of Kern
Metropolitan Division
1415 Truxtun Avenue, Dept. 17
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Trial Judge [Service of Petition only]

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I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and** copies has/have been filed by third party commercial carrier for next business day delivery to:

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I declare under penalty of perjury that the foregoing is true and correct:

Signature: /s/ Kristina Homa, Appellate Paralegal, Counsel Press Inc.; khoma@counselpress.com

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