

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LA TECH AND CONSULTING, LLC, a
California Limited Liability Company,

Plaintiff - Appellant,

v.

AMERICAN EXPRESS COMPANY, a
Utah corporation; erroneously sued as
American Express Company, Inc.; DOES 1-
50, inclusive,

Defendants - Appellees.

No. 25-944

D.C. No.

8:22-cv-01213-DOC-KES

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted September 17, 2026
Pasadena, California

Before: NGUYEN, R. NELSON, and DESAI, Circuit Judges.

Plaintiff LA Tech and Consulting, LLC, brings a claim against Defendant American Express Company for knowingly concealing stolen property in violation of California Penal Code § 496(c). The district court granted American Express's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

late-filed motion for summary judgment based, in part, on its conclusion that LA Tech has not produced evidence showing that American Express had actual knowledge that the property at issue was stolen—a necessary element of the claim. LA Tech appeals, and American Express moves for sanctions. We affirm the district court’s grant of summary judgment to American Express and deny American Express’s motion for sanctions.

1. The district court did not abuse its discretion by accepting American Express’s late-filed motion for summary judgment without ruling on the record. Under Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure, the district court may extend a deadline for good cause where the party failed to act because of excusable neglect. No precedent prohibits a district court from construing a late-filed motion as a motion to modify a deadline calculated under Rule 6(a)(1)(C) or requires a district court to make a Rule 6(b)(1)(B) determination on the record. LA Tech has not shown that the district court’s consideration of American Express’s motion has prejudiced its ability to prosecute this case on the merits. And a unique local rule governed the motion deadline. *See* C.D. Cal. L.R. 6.1. American Express’s miscalculation could reasonably constitute excusable neglect given “the peculiar dictates of the local rules.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259–60 (9th Cir. 2010).

2. The district court properly granted summary judgment to American Express

because LA Tech failed to establish a genuine issue of material fact about whether American Express had actual knowledge that the funds were stolen.¹ To establish a claim under California Penal Code § 496(c), a plaintiff must prove that the defendant had actual knowledge that the property at issue was stolen. *See People v. Tessman*, 223 Cal. App. 4th 1293, 1302 (2014). “Only where the circumstances are such that the defendant ‘must have known’ and not ‘should have known’ will an inference of actual knowledge be permitted.” *RSB Vineyards, LLC v. Orsi*, 15 Cal. App. 5th 1089, 1098 (2017) (quoting *Yuzon v. Collins*, 116 Cal. App. 4th 149, 163 (2004)).

LA Tech does not offer any direct evidence that American Express had actual knowledge that the funds were stolen but claims that actual knowledge may be inferred from the circumstances. LA Tech’s argument that “[m]ere possession of stolen property plus slight corroborative evidence” is sufficient is misplaced. In the cases cited by LA Tech, the defendant could not explain possession of property when circumstances suggested the property was stolen. *See, e.g., People v. Lodge*, 12 Cal. Rptr. 352, 355–56 (Ct. App. 1961); *People v. Vallee*, 86 Cal. Rptr. 475, 477 (Ct. App. 1970) (“There was evidence that the machine was wrapped with a housecoat.”). American Express affirmatively—and plausibly—disclaims actual knowledge by explaining that it doubted LA Tech’s allegations because LA Tech had not alerted

¹ Failure to establish this necessary element is dispositive, so we do not address LA Tech’s other arguments.

Chase Bank of any theft and because LA Tech alerted American Express two years after the alleged theft. The only new evidence that LA Tech has adduced since the pleading stage suggests that American Express knew the disputed transactions were attributed to Mr. Domah, even though it reported them as attributed to Mr. Gamzeletova. But the mismatch between the names of authorized cardholders and the beneficiaries of payment does not necessarily indicate that the transactions were fraudulent. *See, e.g., QDOS, Inc. v. Signature Fin., LLC*, 17 Cal. App. 5th 990, 1001–02 (2017). Accordingly, LA Tech has not shown that American Express had actual knowledge the disputed funds were stolen.

3. We deny American Express’s motion for sanctions under Rule 38 of the Federal Rules of Appellate Procedure, 28 U.S.C. § 1912, and 28 U.S.C. § 1927.

To the extent American Express seeks sanctions for LA Tech’s conduct before the district court, a motion for sanctions before the court of appeals is not appropriate. Each court imposes sanctions only for the conduct before it. *Compare, e.g., Fed. R. Civ. P. 11, with Fed. R. App. P. 38. See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405–07 (1990); *In re Becraft*, 885 F.2d 547, 548 (9th Cir. 1989); *McConnell v. Critchlow*, 661 F.2d 116, 118 (9th Cir. 1981). Our denial is without prejudice to American Express’s motion for sanctions in the district court.

As for sanctions predicated on LA Tech’s conduct in this appeal, we do not find LA Tech’s arguments to be “wholly without merit.” *McConnell*, 661 F.2d at

118. LA Tech correctly calculated the deadline for American Express’s summary judgment motion—even though the district court had discretion to accept the late-filed motion—and express findings are sometimes required. LA Tech also made reasonable arguments for why the district court should have treated differently Mr. Anand’s testimony about whether the funds were stolen. And LA Tech’s argument for why American Express had actual knowledge that the funds were stolen is the same argument that we previously held was sufficient to survive a motion to dismiss. *See LA Tech & Consulting, LLC v. Am. Express Co.*, No. 22-56221, 2023 WL 8166780, at *2 (9th Cir. Nov. 24, 2023). Given the similar standards under Rule 38, 28 U.S.C. § 1912, and 28 U.S.C. § 1927, *see McConnell*, 661 F.2d at 118, we deny American Express’s motion for sanctions.

For these reasons, we affirm the district court’s grant of summary judgment in favor of American Express and deny American Express’s motion for sanctions without prejudice to any motion for sanctions before the district court.

AFFIRMED.