02-16-24
Dept. 9
Tentative Rulings

1. 23CV0774 HARNDEN v. GORMAN

Compromise of Minor's Claim

This is a Petition to compromise a minor's claim. The Petition states the minor sustained injuries to her neck, shoulders, chest and legs resulting from an auto accident in 2022. A copy of the accident investigation report was filed with the Petition, as required by Local Rule 7.10.12A(4). Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $25,000.

The Petition states the minor incurred $1,764.05 in medical expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $3,750.00, which represents 15% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The minor's attorney also requests reimbursement for costs in the amount of $565.95. There are no copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the $18,920 due to the minor, the Petition requests that the funds be deposited into an insured account with Bank of America, subject to withdrawal with court authorization, pursuant to Probate Code § 3611(b). See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #1: APPEARANCE OF THE MINOR IS REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE; APPROVAL OF THE PETITION IS CONDITIONAL ON SUBMISSION OF RECEIPTS FOR COSTS IN THE AMOUNT OF $565.95.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2. 24CV0013 IN THE MATTER OF VANESSA RIOLINO

Compromise of Minor's Claim

This is a Petition to compromise a minor's claim. The Petition states the minor sustained lacerations on his face resulting from a dog bite in 2008 requiring reconstructive surgery. Petitioner requests the court authorize a compromise of the minor's claim against defendants/respondents in the gross amount of $50,000.

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

Medical expenses have already been paid by Defendants' insurance company and no medical expenses will be deducted from the settlement amount.

Defendants' insurance carrier's counsel assisted Petitioner with the Petition, and there is no claim for reimbursement of attorneys' fees from the settlement amount reflected in the Petition. See Petition, Attachment 17.d.

The minor's mother requests that $5,000 of the settlement amount be paid directly to her. Petition ¶18.b.5. There is no statutory authorization for this distribution. Where there is no guardianship in place, the remaining balance of payments for the benefit of a minor after deduction of expenses, costs and fees approved by the court is governed by Probate Code §§ 3610-3611. Section 3611(e) authorizes payment to a parent if the amount of funds to be paid to the minor does not exceed $5,000.

Although the Petition (Judicial Council Form MC-350) cites Probate Code §3401-3402, those sections also apply only where the "total estate of the minor" as defined in the statute, does not exceed $5,000. In this case, the "total estate of the minor" is $50,000 and those sections do not apply.

With respect to the funds due to the minor, the Petition requests that the funds be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #2: APPEARANCES, INCLUDING APPEARANCE OF THE MINOR, IS REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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3. PCL20180059 BENNETT v. RELIABLE MANOWER, INC

(1) Motion to Quash

(2) Motion to Amend Judgment to Include Successor Corporation

Janice Bennett was an employee of a retail store, Alpine Market, which was owned by Reliant Manpower, Inc., a California corporation. Ms. Bennet obtained an award against her employer from the California Labor Commission on February 7, 2018, which was reduced to a civil judgment. Ms. Bennet subsequently assigned the claim to George Sommers pursuant to Code of Civil Procedure § 673. On August 30, 2023, Sommers filed a motion to amend the judgment to include Tahoe Green 2022, alleged to be the successor corporation to the judgment debtor.

Motion to Quash

Tahoe Green 2022, a California corporation ("Tahoe Green"), files this motion to quash pursuant to Code of Civil Procedure § 418.10 asserting that this court lacks jurisdiction over it on the grounds that it has not been properly served with any documents in this case.

Code of Civil Procedure § 416.10 provides:

A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process . . . .

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

If personal service on the individual is not possible, the Code of Civil Procedure provides an alternative:

In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10 . . . , a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.

Code of Civil Procedure § 415.20(a).

On September 20, 2023, Sommers filed a proof of service of the motion to amend the judgment to include Tahoe Green as a successor corporation to Reliant Manpower, Inc. The proof of service includes Hossein Kazemi as the agent for service of process of Tahoe Green 2022, and indicates that service was made by depositing the motion to amend the judgment to include successor corporation in the first class mail on September 14, 2023.

This proof of service did not meet the statutory requirements for service of a corporation under Code of Civil Procedure § 416.10.

On January 30, 2024, Sommers filed a Declaration attaching a proof of service dated September 21, 2023, indicating service made pursuant to Code of Civil Procedure § 416.10(b) on a "general manager" at the address by identified by the Secretary of State's office as the address of agent of the corporation designated to receive service of process. The affidavit of service described the person who received service as "Lilliana Doe, manager of location, Hispanic female, 40-50, 5.2"

Tahoe Green cites the case of Bolkiah v. Superior Ct., 74 Cal. App. 4th 984 (1999) in support of its motion to quash. That case held that "once a defendant files a motion to quash the burden is on the plaintiff to prove by a preponderance of the evidence the validity of the service and the court's jurisdiction over the defendant." Bolkiah v. Superior Ct., 74 Cal. App. 4th 984, 991 (1999). That case goes on to cite Banco Metropolitano, S.A. v. Desarrollo de Autopistas y Carreteras de Guatemala, Sociedad Anonima, Through Junta Interventora of Dag, 616 F. Supp. 301, 304 (S.D.N.Y. 1985): "Although the burden of establishing jurisdiction over a defendant, by a preponderance of the evidence, is on the plaintiff, until an evidentiary hearing is held the plaintiff need make only a *prima facie* showing that jurisdiction exists." Bolkiah, 74 Cal. App. 4th at 991.

In this case, Plaintiff has made a prima facie showing service on a person apparently in charge of the location that is on record with the Secretary of State as the address of the agent for service of process. Tahoe Green has not filed any evidence contradicting the affidavit of service.

Absent evidence that the affidavit of service is defective, the motion to quash is denied.

Motion to Amend Judgment

Although the motion to quash is denied, Tahoe Green has only specially appeared in this matter to contest service and has not had an opportunity to address the motion to amend the judgment to include Tahoe Green as a successor corporation. Accordingly, a hearing on that motion is continued to allow Tahoe Green to file any opposition it might assert to that motion.

TENTATIVE RULING # 3:

(1) THE MOTON TO QUASH IS DENIED.

(2) THE HEARING ON THE MOTION TO AMEND THE JUDGMENT TO INCLUDE A SUCCESSOR CORPORATION IS CONTINUED TO MARCH 22, 2024.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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4. 22CV1621 ALES v. JAGUAR LAND ROVER, NORTH AMERICA, INC.

(1) Motion to Compel - Deposition

(2) Motion to for Leave to File First Amended Complaint

This case involves Plaintiffs' purchase of a used, 2019 Land Rover Range Rover Velar vehicle with 38,228 miles on the odometer that was allegedly still covered by the New Vehicle Limited Warranty up to 50,000 miles.

The initial Complaint was filed on November 15, 2022, and included causes of action for three violations of the Song-Beverly Consumer Warranty Act: 1) breach of express warranty, 2) breach of implied warranty and 3) violation of Civil Code § 1793.2(b).

Motion to Compel

This motion was filed on September 14, 2023. On January 19, 2024, the parties filed a Joint Status Report re: Plaintiff's Motion to Compel Deposition Attendance and Production of Documents that states that the scope of matters for examination and requested document production has been agreed upon.

The parties have been unable to agree on a date for the scheduled deposition. Defendant has offered June 27, 2024, and also requests that the deposition be scheduled after the hearing on its motion for summary judgment, which is currently scheduled to be heard on June 7, 2024.

Plaintiffs have filed a motion to amend the Complaint to add two new causes of action under the Magnuson-Moss Act and the California Commercial Code, based on the same set of operative facts. The hearing on that motion is scheduled for February 16, 2024.

At the hearing held on February 2, 2024, the court directed defendant to provide a Declaration from persons most knowledgeable indicating unavailability and reasons for unavailability. That Declaration was filed with e court on February 8, 2024, indicating that the declarant has a full schedule of litigation through February, 2025, but remains available for the June 27, 2024 date that has been tentatively scheduled. Further, that if an earlier date becomes available, the declarant will notify Plaintiff and offer the earlier available date.

Motion to for Leave to File First Amended Complaint

Plaintiffs seek leave to file a First Amended Complaint ("FAC") to add two causes of action 1) for violation of an express warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.,* and 2) for breach of express warranty under California Commercial Code §2-313. Plaintiffs argue that the underlying facts are the same as the existing cause of action, Plaintiffs are not seeking additional damages, the trial date is set for August 13, 2024, with June 15, 2024 set as the last day to propound discovery, and Defendant will not be prejudiced because there is still time for additional discovery before trial. Plaintiffs argue that they were unaware of the

facts supporting these new causes of action until Plaintiffs' counsel had reviewed documents produced pursuant to discovery and Defendant's defenses to the original Complaint.

Standard of Review

"Great liberality is indulged in matters of amendment to the end that lawsuits may be determined upon their merits." Desny v. Wilder, 46 Cal. 2d 715, 751 (1956).

> While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court, the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. (Citations.) And it is a rare case in which "a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case. (Citations.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations.)

Morgan v. Superior Ct. of Cal. In & For Los Angeles County, 172 Cal. App. 2d 527, 530, (1959).

Code of Civil Procedure § 426.50 provides:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

Code of Civil Procedure § 473(a)(1) further provides:

> The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Further authority for a trial court to authorize the amendment of a pleading is found in Code of Civil Procedure §576:

> Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order.

Defendant does not oppose Plaintiff's motion for leave to amend, but has raised objections to Plaintiffs' service of notice in this and other motions.

TENTATIVE RULING #4:

(1) APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024 IN DEPARTMENT NINE TO DISCUSS SCHEDULE FOR DEPOSITION AND NOTICE ISSUES.
(2) PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5. 22CV0654 TECHNOLOGY INSURANCE CO. v. CHRISTNER

Motion to Release Funds Held in Interpleader

This case arises from an automobile collision on December 4, 2019, between Defendant Timothy Christner and Francisco Romero. Romero was on the job at the time of the collision and his injuries were covered by Worker's Compensation. Defendant Technology Insurance Co. insured the Workers Compensation claim made by Romero's employer. Defendant Timothy Christner holds an automobile liability insurance policy through Plaintiff-in-Interpleader Mercury Insurance Company.

Plaintiff-in-Interpleader ("Mercury Insurance"), asserting that that there were conflicting claims to the funds as between Technology Insurance and Romero, received the court's permission to interplead the $15,000 insurance funds available through Defendant Christner's automobile liability policy. Mercury was then discharged from the case pursuant to Code of Civil Procedure § 386.5.

Defendant-in-Interpleader Technology Insurance Co. ("Technology Insurance") claimed to be the only party entitled to the funds because it had paid out $16,081.05 in medical benefits on behalf of Romero.

<u>Chronology</u>

- May 27, 2022: Technology Insurance filed a Complaint for Workers Compensation benefits through Subrogation.
- July 26, 2022: Romero signed a bodily injury release for Christner's automobile liability policy limits of $15,000.
- August 29, 2022: Technology Insurance obtained a default judgment against Christner.
- February 10, 2023: The default judgment was set aside on the motion of Mercury Insurance.
- February 24, 2023: Mercury Insurance filed a Cross-Complaint-in-Interpleader naming Technology Insurance and Romero as Defendants, and an Answer to Technology Insurance's Subrogation Complaint.
- March 15, 2023: Romero was personally served with notice of the Complaint-in-Interpleader.
- March 24, 2023: Technology Insurance filed an Answer to the Interpleader.

Romero has not responded to the Complaint-in-Interpleader.

At this point, Technology Insurance is the only party remaining in the litigation, as both Mercury Insurance and Christner have been dismissed from the litigation (see Requests for Dismissals filed on November 9, 2023) and Romero has not responded Complaint-in-Interpleader. There is no opposition to Technology Insurance's motion.

> The trial court therefore [has] the power under section 386 to adjudicate the issues raised by the interpleader action including: the alleged existence of conflicting claims regarding the interpleaded funds; plaintiffs' alleged position as a disinterested mere stakeholder; and ultimately the disposition of the interpleaded funds after deducting plaintiffs' attorney fees. (*City of Morgan Hill v. Brown, supra,* 71 Cal.App.4th at p. 1122, 84 Cal.Rptr.2d 361; *Williams v. Gilmore, supra,* 51 Cal.App.2d at p. 688, 125 P.2d 539.)

Dial 800 v. Fesbinder, 118 Cal. App. 4th 32, 43, (2004).

TENTATIVE RULING #5: DEFENDANT-IN-INTERPLEADER'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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6. 24UD0026 CIMMARRON/CAMBRIDGE LLP v. HANNA

Demurrer

Defendants demur to the Complaint in unlawful detainer on the grounds that the Notice to Pay Rent in Three Days or Quit in 30 days is defective because Plaintiff participates in a federally subsidized housing program and failed to provide Defendants with a notice of rights required by the Violence Against Women Act ("VAWA"), 42 U.S.C. Subchapter III.

Notice of Eviction

The Notice to Pay Rent in Three Days or Quit in 30 days ("Notice") is attached to the Complaint in Unlawful Detainer, and indicates that the Notice was posted on the premises on December 6, 2023. A Proof of Service is also attached to the Complaint. The 'just cause' for eviction identified in the Complaint is failure to pay rent. Plaintiff claims exemption from the application of Civil Code § 1946.2 (the Tenant Protection Act of 2019) based on Civil Code § 1946.2 (e)(9), which exempts affordable housing provided pursuant to an agreement with a government agency, as defined in the statute. Complaint, ¶7(a).

Standard of Review

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)
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> In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

Violence Against Women Act Requirements

Federal regulations implementing relevant portions of the VAWA are found in Title 24, Subtitle A, Part 5 Subpart L (§§5.2001-5.2011). Under federal law, a "covered housing provider" as defined in the VAWA must, along with "any notification of eviction" provide to all tenants a notification of occupancy rights under VAWA and a self-certification form, HUD Forms 5380 and 5382. The applicable regulation is set forth in Title 24, Subtitle A, Part 5 Subpart L § 5.2005(a):

(a) Notification of occupancy rights under VAWA, and certification form.

(1) A covered housing provider[1] must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

(i) A "Notice of Occupancy Rights under the Violence Against Women Act,"[2] as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD[3], to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following *December 16, 2016,* either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

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[1] *Covered housing provider* refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity. Title 24, Subtitle A, Part 5 Subpart L § 5.2003.

[2] HUD VAWA Form HUD-5380

[3] HUD VAWA Form HUD-5382

The regulation goes on to specify that:

> Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

Title 24, Subtitle A, Part 5 Subpart L § 5.2005(d); 34 U.S.C. § 12491(b)(3)(C)(ii)[4].

There is no record of compliance with the VAWA notice requirement in the court's records. However, there is also no allegation that either tenant is a victim of domestic violence or that they are being discriminated against in the eviction on that basis. The unlawful detainer Complaint is based on non-payment of rent, for which VAWA expressly authorizes eviction so long as there is no unlawful discrimination based on status as a survivor under the statute.

The notice provided to Defendants meets the requirements of Code of Civil Procedure §1161(2). Defendants have alleged but not established that Plaintiff is a "covered housing provider" subject to VAWA housing regulations; however, the Complaint does allege that the Plaintiff is not subject to the requirements of Civil Code § 1946.2 because the premises is "housing restricted by deed, regulatory restriction contained in an agreement with a government agency . . . as affordable housing . . . , or subject to an agreement that provides housing subsidies for affordable housing . . . ." Civil Code § 1946.2(e). Accordingly, there is every reason to assume that Plaintiff is subject to the VAWA notice requirements.

The question before the court on this demurrer, then, is whether the non-compliance with federal notice requirements invalidates a notice to quit that is otherwise valid under state and federal law.

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[4] Nothing in subparagraph (A) shall be construed-

* * *

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an affiliated person of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; . . .
34 U.S.C. § 12491(b)(3)(C)(ii).

In the recent case of Campbell v. FPI Mgmt., Inc., No. B322619, 2024 WL 194912 (Cal. Ct. App. Jan. 18, 2024), the Court of Appeals considered whether a landlord of federally subsidized housing was liable under California unfair competition laws for using a three-day notice authorized by state law to evict tenants for non-payment of rent where the federal regulations required a 30-day notice. The property management company argued that there was no injury in fact to the tenants because they actually retained possession of the premises for more than 30 days even though they received a three-day notice to quit. The Court held that, even while the tenants retained *possession* of the property, service of the three-day notice resulted in a loss of property *rights*.

The notice provided by Plaintiff declares that if Defendants fail to pay rent within three days of the Notice to Quit "Landlord declares the forfeiture of your Rental/Lease Agreement and will institute legal proceedings to obtain possession." As the Court noted in Campbell:

> Once the tenancy is terminated, however, the tenant loses both contractual rights and property rights under state law. This loss occurs even when the tenant remains in possession of the property. A "tenancy at sufferance" or "holdover tenancy" is created when a tenant who previously had the right of occupancy continues in possession without the landlord's consent after termination of the tenancy. (*Gartlan v. C.A. Hooper & Co.* (1918) 177 Cal. 414, 426, 170 P. 1115; *Multani v. Knight* (2018) 23 Cal.App.5th 837, 852, 233 Cal.Rptr.3d 537 (*Multani*).) With a holdover tenancy, there is no consensual relationship between landlord and tenant. (*Aviel v. Ng* (2008) 161 Cal.App.4th 809, 820, 74 Cal.Rptr.3d 200 (*Aviel*).)

Campbell v. FPI Mgmt., Inc., No. B322619, 2024 WL 194912, at *7 (Cal. Ct. App. Jan. 18, 2024).

"Once a landlord terminates a tenancy, therefore, a person who remains in possession of the property as a holdover tenant loses significant property rights and is immediately subject to legal peril that did not exist under the tenancy." Campbell v. FPI Mgmt., Inc., No. B322619, 2024 WL 194912, at *8 (Cal. Ct. App. Jan. 18, 2024)

Defendants may or may not be able to claim status as a survivor under VAWA. To claim the benefits of VAWA protections they must provide Plaintiff with the HUD self-certification Form HUD-5382. The law does not presume Defendants have knowledge of this opportunity until such time as they are provided with the federally-approved Form HUD-5380 that describes these rights, and the law requires that they be provided with this notice "no later than" the time that the tenant is served "with any notification of eviction," and prior to termination of any tenancy rights. Title 24, Subtitle A, Part 5 Subpart L § 5.2005(a)(2)(iii).

TENTATIVE RULING #6: DEFENDANTS' DEMURRER IS SUSTAINED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING IN FORMATION WILL BE PROVIDED.

7. 22CV0968 COCHRAN v. ACKLEY

Motion for Summary Judgment/Summary Adjudication

The parties entered into a written, month-to-month lease of a residential property on May 1, 2020. On May 24, 2021, Defendant filed a Complaint in Unlawful Detainer alleging that the tenancy was terminated for at-fault just cause, and that Plaintiff was served with a 3-day notice to quit under Civil Code §1946.2.

Defendant also initiated a small claims action against Plaintiff on April 6, 2022 (Case No. 22CV0479), and on June 7, 2022 the court issued a Notice of Entry of Judgment in the amount of $10,000, plus costs, in Defendant's favor.[1] Defendant claimed damage to property ($2,140), non-payment of rent ($7,283), attorneys fees ($1,342) and removal of trash ($815). Both parties appeared at the hearing of the Small Claims Court action and presented evidence. The court found that "[t]here is a preponderance of the evidence to show that the carpets have dog stains and grease stains there was garbage left, the rent was not paid, and the agreement provides for attorney's fees."

Plaintiff filed this action in superior court a few weeks later, on July 14, 2022. Plaintiff alleges the following causes of action: (1) breach of contract; (2) retaliation; (3) trespass; (4) nuisance; (5) deceit; (6) declaratory relief; (7) rescission; (8) lockout; (9) invasion of privacy; (10) defamation; (11) security deposit; (12) intentional infliction of emotional distress; (13) violation of tenant protection act; (14) wrongful eviction; and (15) slander of credit.

Defendant has moved for summary judgment, or in the alternative summary adjudication to Plaintiff's Complaint. Defendant has filed a Separate Statement of Undisputed Material Facts that cites the Complaint and the attached rental agreement, the Plaintiff's deposition, Plaintiff's response to Special Interrogatories, and the Defendant's Request for Judicial Notice. Plaintiff has not responded to contest any of the 36 undisputed material facts in that filing, several of which are admissions that Plaintiff has no evidence to support some of the causes of action. Plaintiff has not responded to Defendant's efforts to meet and confer on this motion. Declaration of Marissa L. Vandersluys, dated August 29, 2023, ¶6.

The court finds that Defendant has met their burden of establishing through Plaintiff's discovery responses and through the submitted deposition that Plaintiff has failed to offer any evidence to show triable issues of material fact. Moreover, Plaintiff herself has not filed a

[1] Defendant requests the court to take judicial notice of Defendant's action against Plaintiff in small claims court and the Notice of Entry of Judgment in that case. These documents constitute judicial records and recorded documents that are appropriately subject to judicial notice pursuant to Evidence Code §§ 451 and 452(d). Accordingly, Defendant's request for judicial notice is granted.

response to indicate the existence of any triable issue of material fact. Based upon the court's review of the record and the evidence and arguments submitted by Defendant, the court finds that there is no triable issue of material fact.

As a separate basis for ruling on this motion, the court is relying on the discretion it is granted by Code of Civil Procedure § 437c(b)(3) to grant the motion based on Plaintiff's failure to comply with the requirement to submit a separate statement in response to the motion.

Finally, Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C) grants the court the discretion to grant a motion that is unopposed:

> If opposition papers are not timely filed, the court in its discretion may deem it a waiver of any objections and treat it as an admission that the motion or other application is meritorious. The court, in its discretion, may grant the motion. In that case, a party desiring to further oppose the motion will be required to bring a properly noticed motion for reconsideration, motion for new trial, or other appropriate motion, and comply with any specific requirements of the motion so brought.

TENTATIVE RULING #5:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. 23CV0070 MANTLE GROUP, INC. v. MCCLAFLIN

(1) Demurrer (All Causes of Action)
(2) Demurrer (Second and Third Causes of Action)
(3) Motion for Sanctions

Plaintiff's First Amended Complaint ("FAC"), filed on June 14, 2023, includes causes of action for breach of contract, specific performance, intentional interference with contractual relations, breach of implied duty of good faith and fair dealing, and fraud.

On October 7, 2014, Plaintiff ("MGI") and Defendants McClaflin and Wilson ("Lessors") entered into a lease agreement to lease certain real property from a term beginning October 1, 2014 through September 30, 2019. FAC ¶14. Payment for the lease term in the amount of $25,000 was due in two installments: $10,000 upon execution of the lease, and $15,000 on or before April 1, 2015. FAC ¶ 15, Exhibit 2, Section 3.1. The lease also contained an option to purchase. FAC, ¶¶13, 16; FAC Exhibit 2, Section 9. Written notice of MGI's intention to exercise the purchase option was due on or before September 30, 2019. FAC ¶17; FAC Exhibit 2, Section 9.1.

On September 29, 2017, MGI's corporate status was suspended by the Secretary of State and remained suspended until November 14, 2022. FAC ¶2. On November 1, 2017, MGI was suspended by the Franchise Tax Board, and remained suspended until May 11, 2022. Under Revenue and Taxation Code § 23302, this resulted in the suspension of the corporation's powers, rights and privileges; during that suspension period the corporation "shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension." Revenue and Taxation Code § 23302(d). The corporation was simultaneously prevented from exercising any "corporate powers, rights, and privileges" as a result of its suspension by the Secretary of State. Corporations Code § 2205.

MGI alleges in the FAC that it exercised the purchase option on September 21, 2019, FAC ¶21, and that Defendants breached the lease by failing to sell the property to MGI. FAC ¶¶36-43. Instead, the property was sold to Defendant Pacific Power Partners ("Pacific"). FAC ¶13, 32. The Grant Deed of that sale was executed by McClaflin on May 19, 2021, and was recorded on May 27, 2021. FAC, Exhibit 1.

Defendant McClaflin ("McClaflin") demurs to the FAC, arguing that the Defendants fully performed the purchase option covenant by refraining from selling the property until after the expiration of the lease term. McClaflin argues that no purchase agreement did or could exist until the purchase option was exercised because MGI as a corporate entity was suspended and had no power to exercise an option or enter into a new contract at that time.

Requests for Judicial Notice

McClaflin and Pacific have filed separate requests for judicial notice of the business records of the Secretary of State's Office regarding MGI's corporate status indicating suspension of MGI by the Secretary of State as of September 29, 2017 and by the Franchise Tax Board as of November 1, 2017, and the reinstatement of MGI by the Franchise Tax Board on May 11, 2022 and by the Secretary of State as of December 8, 2022.

McClaflin and MGI have also filed separate requests for judicial notice with respect to pleadings filed in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). Evidence Code § 452(c) allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States."

A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, the parties' requests for judicial notice are granted.

Standard of Review on Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)
>
> In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

Contract Causes of Action

There is no dispute that the lease agreement and the associated option to purchase agreement were validly executed by parties with legal capacity to enter into contracts. The key issue is whether MGI's suspended status at the time that it attempted to exercise the option to purchase affected the validity of its exercise of the option.

Section 9 of the lease granted to MGI "an option to purchase the Land on the following terms and conditions:"

> 9.1 Lessee may exercise this option on or before September 30, 2019, provided Lessee is not then in default under this Lease, giving Lessor written notice of the exercise of the option.

MGI argues that this issue is irrelevant because it was a corporation in good standing at the time it entered into the lease and purchase option agreement in October, 2014. MGI's opposition states:

> [MGI] remained in good standing years after the commencement of the period for performance. Additionally, with regard to [MGI's] ability to transfer real property, [MGI] would have likely established good standing by the time that the parties executed a real estate purchase agreement, but we can never know, because before that could happen, Defendant McClaflin breached her promises to [MGI], selling the Subject Property to a third party instead. . . . Plaintiff could have revived its status before the signing of any documents necessary to close escrow on its purchase of the Subject Property, under its purchase option agreement.

Plaintiff's Opposition to Defendant McClaflin's Demurrer to the First Amended Complaint at 10:28-11:5.

MGI distinguishes the case of Erb v. Flower, 248 Cal. App. 2d 499, (Ct. App. 1967). In the Erb case, the plaintiff was an assignee of a corporation whose corporate powers were suspended for a period from before the commencement of a contract that ran from November 1962 through October, 1964, and its corporate status was not reinstated until after the expiration of the term of the contract. Under the contract the suspended corporation was guaranteed orders of a certain quantity of product. However, because the defendant placed no orders for the product during the contract term the plaintiff sued for breach of contract. The corporate status was reinstated after the term of the contract had expired, such that "during the *entire performance period* of the contract the plaintiff's assignor was incapable of performing its obligations under the contract." Erb at 500 (emphasis in original). The trial court found that the

defendant's repudiation of the contract was justified under those circumstances because of the corporation's inability to perform during the contract term. The appellate court granted that the contract itself was valid, as it had been executed prior to the corporate suspension. However, it was unable to perform the contract during its term because of the suspension. Id. The appellate court affirmed the judgment, citing Vogue Creamery Co. v. Acme Ice Cream Co., 8 Cal. App. 2d 357 (1935):

> "*When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation, and cannot recover upon his offer of performance if he is not able and willing to perform according to the offer*." (Italics added; p. 359, citing Civ. Code, § 1495 and Dickey v. Kuhn, 106 Cal.App. 300 [289 P. 2422].)

Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967).

MGI argues that because "[h]ere, unlike the plaintiff in Erb, Plaintiff's corporate status was not suspended until years after the period for performance commenced." While it is true that MGI was a corporation in good standing at the time the lease and option were executed, at the time for performance, *i.e.* the time for exercising the option to create a new purchase contract, MGI's corporate powers, rights, and privileges were suspended by operation of law, rendering it "incapable of making a valid tender" of an option under the agreement. Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967). This suspended status continued from approximately two years prior to the attempt to exercise the option to purchase, and extended until approximately three years after the deadline for exercising the option. The hypothetical possibility that MGI might have reinstated its corporate status in time to open escrow and make a payment under the option agreement does not affect McClaflin's legal rights to refuse the tender of the offer based on the corporation's status at the time the tender was made. MGI was equally able to rehabilitate its corporate status prior to exercising the option, or even in the period following and prior to the sale to Pacific two years later in 2021, but it did not.

In Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) a trial court renewed a judgment in favor of a corporation that was in good standing at the time of the judgment but had been suspended at the time that the corporation requested renewal of the judgment. The renewal of the judgment was overturned by the appellate court because of the application of Revenue and Taxation Code §§ 23301 and 23302, which disqualifies the corporation from "exercising any right, power or privilege" during a suspension period. The court held that "invocation of the benefits of California laws" is a right and privilege "reserved to those corporations which pay their franchise taxes in a timely fashion and remain in good standing with the California Secretary of State and taxing authorities." Timberline, 54 Cal. App. 4th 1361 at 1368. The court noted that the corporation "could have avoided this result by reviving itself prior

to filing its application to renew the judgment, or at any time before its 10-year life expired." Id. at 1369.

MGI distinguishes Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) because MGI did in fact revive its corporate standing on or around November 14, 2022, which "has been held to validate otherwise invalid prior action" citing Timberline at 1366. The passage cited by MGI is *dicta*, listing circumstances in which courts have considered whether corporate reinstatement could save a prior action that had been taken during a suspension period. *See*, Traub Co. v. Coffee Break Serv., Inc., 66 Cal. 2d 368, 425 P.2d 790 (1967) (a judgment in favor of a corporation that was in good standing when the action was filed but was suspended during the pendency of the litigation was not invalidated where the defendant did not raise the issue until after the time for appealing the judgment had expired and the judgment had become final); Diverco Constructors, Inc. v. Wilstein, 4 Cal. App. 3d 6 (1970) (a motion to dismiss litigation based on a party's suspended corporate status was groundless where the corporation revived its status before the motion to dismiss was filed); A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d 499 (1969) (suspended corporation that obtained a writ of attachment and revived its corporate status before the filing of a motion to discharge the writ was still entitled to enforce it); Duncan v. Sunset Agr. Mins., 273 Cal. App. 2d 489 (1969) (trial court's determination that suspended corporation had no standing to defend the action was overturned where the corporate status was revived before the deadline for filing a motion to vacate the judgment had expired). In each of the cases listed as exemplars of this principle in the Timberline *dicta* cited by MGI, the context was a judicial proceeding which favors judgment on the merits and disfavors pleas in abatement. A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d at 500 (1969). More importantly, each of those examples considers the timing of the revival of the corporation and whether it occurs within applicable deadlines. Those cases are distinguishable from the situation in this case because here the deadline for exercising the option had passed and the underlying lease and purchase option agreements had both expired when the corporate status was restored.

MGI also attempts to distinguish Damato v. Slevin, 214 Cal. App. 3d 668 (1989) in which the court of appeal upheld the trial court's grant of a summary judgment on the basis that a subsequent revival of corporate standing did not deprive the other party of its statutory right to treat the contract as voidable under the Revenue and Taxation Code.[2]

MGI's position relies heavily on the fact that it was a corporation in good standing with the capacity to enter into contracts at the time that the lase and purchase option agreements

[2] Revenue and Taxation Code § 23304.1(a): Every contract made in this state by a taxpayer during the time that the taxpayer's powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the request of any party to the contract other than the taxpayer.

were executed. However, MGI's arguments ultimately fail because the purchase agreement that it seeks to enforce in this action would have been formed at the time of its exercise of the option, a time when, as a suspended corporation, it did not have contracting capacity. The nature of a option to purchase agreement was discussed in the case of Auslen v. Johnson, 118 Cal. App. 2d 319, (1953:

> [An option to purchase real estate] is a unilateral agreement. The optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. Upon the lapse of that time the matter is completely ended and the offer is withdrawn. If the offer be accepted upon the terms and in the time specified, then a bilateral contract arises . . . .

Auslen v. Johnson, 118 Cal. App. 2d 319, 321–22 (1953). *See also*, Erich v. Granoff, 109 Cal. App. 3d 920 (1980):

> An option may be viewed as a continuing, irrevocable offer to sell property to an optionee within the time constraints of the option contract and at the price set forth therein. It is, in other words, a unilateral contract under which the optionee, for consideration he has given, receives from the optionor the right and the power to create a contract of purchase during the life of the option. "An option is a contract, made for consideration, to keep an offer open for a prescribed period" (1 Witkin, Summary of Calif.Law, 8th ed., Contracts, Œ 216). An option is transformed into a contract of purchase and sale when there is an unconditional, unqualified acceptance by the optionee of the offer in harmony with the terms of the option and within the time span of the option contract.

Erich v. Granoff, 109 Cal. App. 3d at 927–28.

Given that MGI did not have the legal capacity to form a bilateral purchase contract by exercising the option while its corporate status was suspended, there was no contract to breach and the First Cause of Action must fail. The Second, Third and Fourth Causes of Action for specific performance, intentional interference with contractual relations and breach of implied duty of good faith and fair dealing also depend on the existence of a contract and similarly cannot withstand the challenge of a demurrer under these facts.

Fraud Cause of Action

Plaintiff alleges in the Fifth Cause of Action for fraud that the Lessor Defendants committed fraud because, MGI alleges, at the time the lease and option agreement were executed in 2014 they included the option as an inducement for MGI to enter the lease but had no intention on honoring the option if MGI elected to exercise it. FAC ¶¶75-77.

The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. Witkin, Summary 11th Torts § 890 (2023). A promise to do something necessarily implies the intention to perform, and where that intention is absent, there is an implied misrepresentation of fact, which is actionable fraud. Id. § 899.

> In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations] "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered."

Lazar v. Superior Ct., 12 Cal. 4th 631, 645 (1996).

As discussed above, in the context of a demurrer, "we accept as true all material facts alleged in the complaint, but not contentions, deductions or conclusions of fact or law." Reeder v. Specialized Loan Servicing LLC, 52 Cal. App. 5th 795, 800 (2020).

In this case, the following allegations are made in support of the fraud cause of action:

- The option to purchase was a material inducement to enter into the lease and option agreement. FAC ¶16.
- McClaflin "continued to delay" MGI's efforts to exercise the option. FAC ¶ 22.
- "[F]or reasons unknown to Plaintiff, Defendants never completed the transaction." FAC ¶30.
- Plaintiff is informed and believes, and thereon alleges that Defendants McClaflin and Wilson knowingly and willfully conspired to defraud Plaintiff by utilizing the false pretense that Plaintiff would have the right to purchase the Subject Property FAC ¶75.
- On information and belief, Defendants McClaflin and Wilson had no intention of performing this promise when it was made. FAC ¶77.

As stated in the Reeder case:

> These allegations are the very sort of general and conclusory allegations that are insufficient to state a fraud claim. For one thing, plaintiff has alleged no facts or circumstances suggesting defendants' intent not to perform the alleged promise when it was made. "It is insufficient to show an unkept but honest promise, or mere subsequent failure of performance." [Citations]. Plaintiff has alleged no facts or surrounding circumstances suggesting anything more.

Reeder v. Specialized Loan Servicing LLC, 52 Cal. App. 5th at 804.

The extent of the allegations on the issue of McClaflin's allegedly false promise is that McClaflin "continued to delay" the transaction, FAC ¶22; that Plaintiff doesn't know why McClaflin never completed the transaction, FAC ¶30; and that "on information and belief" Defendants willfully conspired to defraud Plaintiff on false pretenses with no intention of performing the promise. FAC ¶¶75, 77.

Counterbalancing these "general and conclusory" allegations on information and belief, is the undisputed fact that Plaintiff did not have the legal capacity to enter into a purchase agreement at all times that it attempted to exercise the option before and after the option expired. "When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation"] . . . ." Damato v. Slevin, 214 Cal. App. 3d 668, 674 (1989).

Motion for Terminating and Monetary Sanctions

Pacific has moved for terminating and monetary sanctions under Code of Civil Procedure § 128.7, which provides, in pertinent part:

> (b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
>
> * * *
>
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> * * *
>
> (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.
>
> (1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If

> warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .
>
> * * *
>
> (d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.
>
> * * *
>
> (e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.
>
> * * *

Pacific argues that sanctions are warranted, both terminating sanctions with prejudice as well as the award of Pacific's attorney's fees in defending against Plaintiff's case.

Pacific's motion notes that it purchased the property on May 27, 2021, several months after February, 2021, by which time all communications had ceased between MGI and the Lessor Defendants. FAC ¶31. MGI's capacity to enter into contracts as a corporation in good standing was not revived until November 14, 2022. FAC ¶2.

Initially MGI asserted a cause of action for unjust enrichment against Pacific in its initial Complaint filed on December 13, 2022. Pacific initiated communication with counsel for MGI on March 9, 2023 and continued meet and confer communications with counsel for MGI through July 17, 2023. Declaration of Corey M. Day, dated August 18, 2023 ("Day Declaration") ¶¶5, 8, Exhibit 3. In the course of these communications counsel for MGI drafted the First Amended Complaint, converting the unjust enrichment claim against Pacific in the original Complaint to claims for intentional interference with contractual relations and specific performance in the FAC. Id., Exhibits 1, 2. Days before the FAC was filed, Pacific advised MGI that the intentional interference claims of the FAC were also deficient because the option had expired in 2019. Id., ¶8. Pacific further advised MGI that the intentional interference causes of action were not supported by evidence because MGI could not have entered into the purchase contract as a matter of law because at all relevant times its corporate status was suspended. Day Declaration, ¶¶6, 8. Pacific advised MGI that if the unsubstantiated claims against Pacific were not dismissed then Pacific would file this motion for sanctions. Id., Exhibit 3.

> Tortious interference with contractual relations requires "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage."

Ixchel Pharma, LLC v. Biogen, Inc., 9 Cal. 5th 1130, 1141 (2020).

It is undisputed that the lease and option to purchase contract expired in September, 2019, and that Pacific purchased the property in May, 2021. The FAC alleges that "on information and belief" Pacific had become aware of MGI's contract and MGI's attempt to exercise the option, but that does not include any assertion that Pacific had any reason to believe that the option to purchase continued in existence or that MGI had a continuing ability to exercise the option. In fact, at the time of Pacific's purchase and for almost a year after that MGI continued in a state of corporate suspension with no capacity to enter into new agreements as a matter of law on the public record. Nevertheless, even after several months of discussion of these defects with counsel for Pacific MGI declined to withdraw the causes of action against Pacific. As a result, Pacific was forced to defend this lawsuit and file this demurrer and request for sanctions.

The court finds that the allegations and factual contentions underling the claims against Pacific do not have evidentiary support and that Plaintiff is not likely to be able to develop evidentiary support for those claims after a reasonable opportunity for further investigation or discovery. Code of Civil Procedure § 128.7(b)(3). The court finds that Pacific exercised due diligence in attempting to persuade MGI to withdraw its claims against Pacific, beginning on March 9, 2023, through the date that the FAC was filed, including its intention to seek sanctions. Code of Civil Procedure § 128.7(c). The court finds that more than 21 days have passed since the motion for sanctions was served on counsel for MGI on September 15, 2023. Code of Civil Procedure § 128.7(c)(1).

Accordingly, the court finds that an award of sanctions is justified, and that a reasonable sanction that is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated is the award of Pacific's attorney's fees in defending this action from the date of the filing of the FAC on June 14, 2023, according to proof. Code of Civil Procedure § 128.7(d).

TENTATIVE RULING #8:

1. **ALL REQUESTS FOR JUDICIAL NOTICE ARE GRANTED.**
2. **DEFENDANT MCCLAFLIN'S DEMURRER TO ALL CAUSES OF ACTION IS SUSTAINED WITHOUT LEAVE TO AMEND.**

(3) DEFENDANT PACIFIC POWER PARTNERS, LLC'S DEMURRER TO THE SECOND AND THIRD CAUSES OF ACTION IS SUSTAINED WITHOUT LEAVE TO AMEND.

(4) DEFENDANT PACIFIC POWER PARTNERS, LLC'S MOTION FOR SANCTIONS IS GRANTED; DEFENDANT PACIFIC POWER PARTNERS, LLC IS AWARDED THE AMOUNT OF ITS ATTORNEYS' FEES INCURRED IN DEFENDING THIS LAWSUIT FROM THE DATE OF JUNE 14, 2023, ACCORDING TO PROOF.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. 21CV0167 CLAIM OF MOLLY BUTTERFIELD

Pre-Trial Conference

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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10. PC20210120 PEOPLE OF THE STATE OF CALIFORNIA v. GIAR KING

Trial Setting

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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11. 22CV0482 PEOPLE v. MACEIUNAS

Petition for Forfeiture

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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12. PCL20210332 PEOPLE OF THE STATE OF CALIFORNIA v. PATRICK KELLY

Claim Opposing Forfeiture

TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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13. 23CV0581 PEOPLE OF THE STATE OF CALIFORNIA v. 31,939.97 IN US CURRENCY

Petition Hearing

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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