

**1. 23CV0842 RAGLAND v. PG&E**

**Motion to be Relieved as Counsel**

Counsel for Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that an irreparable breakdown in the relationship between attorney and client occurred, the particulars of which are confidential according to the Rules of Professional Conduct.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Plaintiff at her last known address and on opposing counsel on February 6, 2024, was filed on February 6, 2024.

A Case Management Conference is currently scheduled for the case on March 4, 2024.

**TENTATIVE RULING #1: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).**

**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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**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**

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**APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING  
INFORMATION WILL BE PROVIDED.**

**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.

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**TENTATIVE RULING #2: APPEARANCES, INCLUDING APPEARANCE OF THE MINOR, ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024, IN DEPARTMENT NINE.**

**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.**

**3. 23CV2203 GRAVES-MERCADO v. GOMEZ**

**Compromise of Minor's Claim**

This is a petition to compromise a minor's claim. The petition states the minor sustained injuries in an auto accident in 2019. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$115,000.

The petition states the minor incurred \$2,118.50 in medical expenses that would be deducted from the settlement amount. Copies of a bill substantiating payment of 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 accident investigation report be filed with the petition as required by Local Rule 7.10.12A(4).

The petition states that the minor has fully recovered from the injuries allegedly suffered 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).

No attorney's fees are proposed to be paid from the settlement proceeds.

The minor's attorney also requests reimbursement for costs in the amount of \$446.06. Copies of invoices substantiating the claimed costs are attached to the petitions as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The petitioner also requests an order to deposit \$112,335.44 with a custodian for the benefit of the minor under the California Uniform Transfers to Minor's Act. The Petition, Attachment 18b(6), includes the name and address of the custodian, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The Petition includes all information and documents that are required; however, 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 #3: APPEARANCES, INCLUDING APPEARANCE OF THE MINOR, ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024, IN DEPARTMENT NINE.**

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**4. 22CV0690 MALAKHOV v. MARTINEZ (SEE #8)**

**Motion for Leave to File First Amended Complaint**

On October 31, 2023, Plaintiffs filed a motion for leave to file a First Amended Complaint (“FAC”). According to Plaintiffs’ motion, the proposed amendment include: (1) non-substantive clerical correction; (2) amending the name of one Defendant to accurately reflect their name; (3) amending existing causes of action for clarity; (4) adding causes of action based on facts already pleaded; (5) adding causes of action based on newly-discovered facts; and (6) additions to Plaintiff’s prayer based on the proposed additions and amendments to the causes of action.

The hearing on this motion was initially continued from December 22, 2023, to January 26, 2024 because Defendant Brian Morrow filed an Opposition stating that he had not received a copy of the motion. Plaintiff later requested a further continuance in order to wait for the outcome of a hearing in a related matter in bankruptcy court.

In the court’s December 22, 2023, Tentative Ruling on this motion, the court noted that, in addition to Defendant Morrow’s opposition, the motion failed to meet the requirements of the California Rules of Court, Rule 3.1324.

There are representations in the parties’ pleadings that an amended motion has been filed with the court; however, for reasons unknown, that filing does not appear in the court’s records. The contents of a proposed First Amended Complaint are relevant to the motion for summary judgment that is also pending in this case. Accordingly, the matter will be continued to be heard concurrently with the motion for summary judgment and allowing the Plaintiff an opportunity to re-file this motion.

**TENTATIVE RULING #4: THE MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 19, 2024, IN DEPARTMENT NINE, TO BE HEARD CONCURRENTLY WITH THE MOTION FOR SUMMARY JUDGMENT.**

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**5. 24CV0057 CRAIG v. JOHNSON**

**Petition for Order Compelling Arbitration**

This Petition concerns a dispute that arose from a contract entered into by the parties in April, 2018. Due to an alleged breach of the agreement and pursuant to an arbitration clause contained within the agreement, a demand for arbitration was served on Respondent in February, 2022. Discussions related to arbitration were conducted during most of 2022. Mediation of the dispute in February 2023 resulted in a tentative settlement agreement that was never finalized, and a second demand for arbitration was served on Respondent in July, 2023.

There is no dispute as to the existence of the arbitration clause in the parties' agreement. The parties have selected a neutral arbitrator. The dispute before the court is Petitioner's claim that Respondent refuses to agree on a date certain for the arbitration, effectively amounting to a refusal to submit the dispute to arbitration.

Respondent indicates that the timing of continued arbitration was complicated when its insurance carrier for its policy covering the period of 2017 to 2018 sold the subject policy to a new carrier, Enstar. Enstar, in turn, retained Gallagher Bassett as its third-party administrator ("TPA"). Respondent represents that there have been ongoing difficulties with changing assignments of claims representatives with the TPA, a matter that is beyond Respondent's control. Respondent received a notice of such an assignment from the TPA in October 2023, and subsequently a different individual was identified as Respondent's assigned claims administrator in January, 2024. Declaration of Karin L. Landry, dated January 26, 2024, Exhibits O, R. At the same, time, Respondent has requested information regarding the increased amount of Petitioner's demand since the time the parties previously reached a tentative settlement. *Id.*, Exhibits D, S T. Respondent represents that billing invoices requested from Petitioner to substantiate the increased claim amount have been requested of Petitioner as recently as January 15, 2024 but have not yet been received. *Id.*, Exhibit T.

Petitioner's request is for an Order compelling arbitration of this dispute to be completed within one month. Respondent does not dispute the existence of the arbitration clause or otherwise resist arbitration of the dispute, but requests that the Order specify that arbitration must be completed within five months of the Order in order to allow time for designation of a claims administrator by its TPA, to receive updated information on the amount of attorney's fees claimed by Petitioner, to conduct discovery in the arbitration process, and to accommodate the schedules of the parties and of the selected arbitrator.

Code of Civil Procedure § 1281.2 requires the trial court to order arbitration of a controversy "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to

arbitrate such controversy ... if it determines that an agreement to arbitrate the controversy exists.” In this case there is no dispute that an arbitration agreement governs the parties’ dispute. The parties have already agreed upon a neutral arbitrator. Petition, Exhibit H. As late as December 2023, the parties were engaged in selecting dates for arbitration, and this Petition was filed on January 9, 2024.

The court finds that the Order compelling arbitration is mandated by statute under the circumstances of this case, and that the parties should be afforded adequate time to conduct discovery pursuant to Code of Civil Procedure § 1283.05.

**TENTATIVE RULING #5: PETITIONER’S REQUEST FOR AN ORDER COMPELLING ARBITRATION IS GRANTED, SUCH ARBITRATION TO BE COMPLETED WITHIN FIVE MONTHS OF THE DATE OF THE ORDER.**

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**6. PC20210067 STEPHEN, ET AL v. SARGENT**

**Compromise of Minors' Claims**

This is a petition to compromise three related minors' claims brought by their parent. All three were injured in an auto accident in 2019. There is no copy of the accident investigation report filed with these Petitions as is required by Local Rule 7.10.12A(4).

Sophia

Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$30,000.

The Petition states the minor sustained abrasion to her head and neck pain, and that the minor has fully recovered from the injuries allegedly suffered 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 Petition states the minor incurred \$3,971.27 in medical expenses that will be reimbursed from the proceeds of the settlement. Copies of a bill substantiating payment of the claimed medical expenses are not attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The minor's attorney requests attorney's fees in the amount of \$7,500, which represents 25% 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. California Rules of Court, Rule 7.955(a)(1).

The minor's attorney also requests reimbursement for costs in the amount of \$958.53. 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).

The petitioner also requests an order to deposit the amount of \$17,570.20 into a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The payout on January 18, 2029, would be in the amount of \$21,690.38. The name and address of the depository are attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

Katherine

Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$30,000.

The Petition states the minor sustained abrasion to her head, and that the minor has fully recovered from the injuries allegedly suffered 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 Petition states the minor incurred \$3,428.44 in medical expenses that will be reimbursed from the proceeds of the settlement. Copies of a bill substantiating payment of the claimed medical expenses are not attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The minor's attorney requests attorney's fees in the amount of \$7,500, which represents 25% 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. California Rules of Court, Rule 7.955(a)(1).

The minor's attorney also requests reimbursement for costs in the amount of \$958.53. 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).

The petitioner also requests an order to deposit the amount of \$18,113.03 into a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The payout on January 26, 2032, would be in the amount of \$26,152.63. The name and address of the depository are attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

#### Stephanie

Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$40,000.

The Petition states the minor sustained facial lacerations, and that the minor will have permanent scarring as a result. 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 Petition states the minor incurred \$2,627.41 in medical expenses that will be reimbursed from the proceeds of the settlement. Copies of a bill substantiating payment of the claimed medical expenses are not attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The minor's attorney requests attorney's fees in the amount of \$10,000, which represents 25% 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. California Rules of Court, Rule 7.955(a)(1).

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The minor's attorney also requests reimbursement for costs in the amount of \$958.53. 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).

The petitioner also requests an order to deposit the amount of \$26,414.06 into a single-premium deferred annuity, subject to withdrawal only on authorization of the court. The payout on January 31, 2040, would be in the amount of \$57,809.63. The name and address of the depository are attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

In accordance with Local Rules of the El Dorado County Superior Court, Rule 7.10.12D, the presence of the minors is required at the hearing on the Petition.

**TENTATIVE RULING #6: APPEARANCES ARE REQUIRED, INCLUDING APPEARANCES OF THE MINORS, AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024, IN DEPARTMENT NINE.**

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7.       **23UD0334                   GREENSTONE MOBILE HOME PARK LP v. MARONI**  
  
          **Demurrer**

**TENTATIVE RULING #7: AT PLAINTIFF’S REQUEST AND PURSUANT TO A SETTLEMENT AGREEMENT ENTERED INTO BY THE PARTIES THIS MATTER HAS BEEN DISMISSED WITHOUT PREJUDICE.**

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**8. 22CV0690 MALAKHOV v. MARTINEZ (SEE #4)**

**(1) Demurrer**

**(2) Motion for Summary Judgment**

This action arises from a contract for new home construction on real property purchased by Plaintiffs. Plaintiffs contracted with the seller, Greyson Creek, LLC for the construction of the home, and when the construction was not completed by the date specified in the contract, initiated this lawsuit against the Greyson Creek, LLC, the principals of Greyson Creek, LLC, and the real estate brokerage that represented the seller, All City Homes dba Side, Inc.

Plaintiffs/Cross-Defendants Joshua Brost and Daniel Malakhov filed an action alleging breach of contract, breach of the covenant of good faith and fair dealing, fraudulent inducement of a contract, negligent and intentional infliction of emotional distress, negligence, fraud, deceptive business practices and attempted civil extortion in a dispute arising from the construction of a custom home by Defendants/Cross-Complainants.

Defendants/Cross-Complainants 5059 Greyson Creek Drive, LLC and Brian Morrow filed a Cross-Complaint against Plaintiffs for 1) breach of contract, 2) substantial performance, 3) anticipatory breach and 4) breach of covenant of good faith and fair dealing. The CrossComplaint was filed on March 28, 2023.

Demurrer

Plaintiffs/Cross-Defendants filed a demurrer to the Cross-Complaint on May 11, 2023.

On November 22, 2023, a Notice of Bankruptcy was filed by Defendant/Cross-Complainant 5059 Greyson Creek Drive, LLC.

At the court's request, counsel for Defendant/Cross-Complainant Brian Morrow submitted a briefing to the court as to the procedural options available to address the pending demurrer to the Cross-Complaint, given that this court's proceedings are subject to an automatic stay triggered by the Notice of Bankruptcy filed by Defendant/Cross-Complainant 5059 Greyson Creek Drive, LLC.

Absent an alternative arrangement through the consent of the parties to the Cross-Complaint and the demurrer who are not parties to the bankruptcy proceeding, this court will be required to bifurcate the matter to separate the elements of the case that are subject to the bankruptcy stay from the parties whose interests are not affected by those bankruptcy proceedings. The alternative to bifurcation is for the remaining parties to the Cross-Complaint and the demurrer to the Cross-Complaint to agree to the withdrawal of the demurrer without prejudice and with leave to re-file the demurrer as to Defendant/Cross-Complainant Brian

Morrow and without reference to 5059 Greyson Creek Drive, LLC within 30 days. Cross-Complainant Brian Morrow would also be required to consent to not take any action to file for a default judgment for at least 40 days in the event that the time for re-filing the demurrer should elapse without the filing of an amended demurrer. Cross-Complainant Brian Morrow filed such consent with the court on January 24, 2024.

Motion for Summary Judgment

Much of Plaintiff's arguments in opposition to the motion for summary judgment depend on the causes of action framed in the Complaint. Plaintiffs have filed a motion for leave to amend the Complaint, and that motion had to be re-filed to comply with the requirements of the California Rules of Court. In that process of filing the motion for leave to amend the Complaint and due to the court's own oversight, the amended motion was not entered into the court's system and is not available for the court's consideration in the hearing scheduled for February 23, 2024.

The proposed amendment to the Complaint will likely affect the analysis required for determining the summary judgment motion. Accordingly, this motion for summary judgment will be continued to a time when it can be heard concurrently with the motion for leave to amend the Complaint.

**TENTATIVE RULING #8:**

- (1) APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024, IN DEPARTMENT NINE FOR THE PURPOSE OF DETERMINING WHETHER ALL PARTIES TO CONSENT TO THE WITHDRAWAL AND RE-FILING AN AMENDED DEMURRER WITHIN 30 DAYS TO EXCLUDE DEFENDANT/CROSS-COMPLAINANT 5059 GREYSON CREEK DRIVE, LLC, OR WHETHER THE COURT SHOULD INSTEAD BIFURCATE THE CASE TO ADDRESS THE BANKRUPTCY STAY IN EFFECT REGARDING CROSS-COMPLAINANT 5059 GREYSON CREEK DRIVE, LLC.**
- (2) THE MOTION FOR SUMMARY JUDGMENT IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 19, 2024, IN DEPARTMENT NINE, TO BE HEARD CONCURRENTLY WITH THE MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT.**

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**9. 23CV0339 MICKELSON v. BYERS, ET AL**

**Motion for Judgment on the Pleadings**

This dispute arises from the sale of a residential property to Plaintiff, following which Plaintiff discovered that the garage had not been constructed with the required permits. Resolving this matter with the City of Placerville required Plaintiff to pay for substantial additional improvements to the property.

Plaintiff's First Amended Complaint ("FAC") contains causes of action for (1) Failure to Disclose Material Facts in Violation of Civil Code section 1102 et seq.; (2) Fraud in the Purchase of Real Property; (3) Negligent Misrepresentation; and (4) Breach of Fiduciary Duty.

Defendants Side, Inc. and Nathaniel Davis ("Defendants") are the listing broker and the real estate agent employed by Side, Inc., respectively, who represented the seller in the real estate purchase and sale transaction. These Defendants have filed this motion for judgment on the pleadings on all four causes of action, arguing that the first, third and fourth causes of action are barred by a two-year statute of limitations. Defendants argue that the second cause of action for fraud does not contain sufficient factual allegations to state a claim, and that the fourth cause of action additionally fails because these Defendants represented the sellers, not the buyers, and so did not have a fiduciary duty to the Plaintiff in the transaction.

Plaintiffs concede that the two-year statute of limitations bars the first, third and fourth causes of action. The only remaining dispute, then, is whether under the applicable standard of review on a motion for judgment on the pleadings is whether the FAC adequately pleads a cause of action for fraud.

Request for Judicial Notice

Defendants have filed a Request for the court to take judicial notice of the First Amended Complaint filed in this action. 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). 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, Defendants' request for judicial notice is granted.

### Standard of Review

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. “Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.” Code of Civil Procedure § 438(d).

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

A motion for judgment on the pleadings performs the same function as a general demurrer....” (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) “It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings.” (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, “[a]ll facts alleged in the complaint are deemed admitted....” (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) “Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings.” (*Cloud*, at p. 999, 79 Cal.Rptr.2d 544.)

Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.

### First, Third, and Fourth Causes of Action

As noted above, Plaintiff concedes that the First, Third, and Fourth Causes of Action are barred by the statute of limitations. As such, the court grants the motion for judgment on the pleadings as to these causes of actions without leave to amend.

### Fraud Cause of Action

The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, 49 Cal.Rptr.2d 377, 909 P.2d 981.)

West v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 780, 792 (2013).

The FAC alleges that Davis represented the Sellers in 2014 when they originally purchased the property. FAC ¶10. In the preceding sale, the Transfer Disclosure Statement executed in 2014 by the prior owner (“2014 TDS”) disclosed that there was unpermitted work done to the property, specifically that the garage had not been permitted when it was rebuilt over an existing foundation. FAC ¶11; Exhibit 1. The Addendum to the 2014 TDS contained the following statement:

Per Buyers request to itemize known work done without permit I have the following list. This list only represents work known to have been done and not work that is required to be permitted . . . Garage was rebuilt over existing foundation.

Receipt of the 2014 TDS was acknowledged by Davis. FAC ¶12.

Davis was the real estate agent retained by the sellers when the property was again put up for sale in 2017. FAC ¶13. Plaintiff entered into a purchase agreement for the property in 2018. FAC ¶14; Exhibit 2. A TDS was executed as part of that transaction (“2018 TDS”). FAC ¶15; Exhibit 3. The 2018 TDS indicated that the sellers were not aware of any unpermitted work having been done on the property. FAC ¶16; Exhibit 3. Davis also acknowledged receipt of the 2018 TDS. FAC ¶17; Exhibit 3.

The FAC’s third cause of action alleges that Defendants “affirmatively failed to disclose that the garage was unpermitted” (FAC ¶40), and that the Defendants had no reasonable grounds for representing that no work had been done without proper permits. (FAC ¶¶41-42) The FAC alleges that these were misrepresentations and omissions that were made to induce Plaintiff to purchase the property, FAC ¶43, and that Plaintiff justifiably relied on Defendants’ representations in forming a belief that all work on the property had been appropriately permitted. FAC ¶44-45.

Defendants rely on the wording of the 2014 TDS to deny that the 2018 representations were false, because in 2014 the work on the garage was identified as having been unpermitted, but that statement was qualified by the caveat that the work on the garage was listed as “work known to have been done and not work that is required to be permitted”. In other words “seller made no representation as to whether permits were necessary to rebuilt the garage over the existing foundation.” Defendants’ Reply Brief in Support of Motin for Judgment on the Pleadings.

Plaintiff’s response to this argument is that as licensed real estate professionals Defendants can be charged with knowledge that the construction of a garage would require permits.

Given the standard of review for judgment on the pleadings the court finds that the Plaintiff has stated facts sufficient to withstand a motion for judgment on the pleadings.

**TENTATIVE RULING #9:**

- (1) DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
- (2) DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND AS TO THE FIRST, THIRD, AND FOURTH CAUSES OF ACTION.**
- (3) DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED AS TO THE SECOND CAUSE OF ACTION.**

**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.**

**10. 24UD0016 WILLIAMS v. PRETTYMAN**

**Motion to Compel Answers to Interrogatories**

This case is set for trial on February 26, 2024, three days after the hearing on this motion.

Plaintiff is the trustee of the Robert V. Williams Revocable Living Trust (“Trust”) and became the owner of the real property at issue as of August 9, 2023, pursuant to a Trustee’s Deed Upon Sale. Defendant is the daughter of the prior owners, who are now deceased, and has remained in possession since the property was foreclosed.

Defendant has not responded to Form Interrogatories and Request for Admissions to which responses were due on January 29, 2024. Petition, Exhibit 1.

Plaintiff requests the Requests for Admissions Nos. 1, 2, 3, 4, 5, 6 are deemed admitted; that the Request for Admission of Genuineness of Documents requesting that the genuineness of Plaintiff’s Exhibits 4, 5, 6, 7, and 8 are deemed genuine.

Plaintiff further seeks an Order preventing Defendant from introducing designated matters into evidence that are covered by specified Form Interrogatories “most pertinent to trial preparation” to which Defendant has failed to respond. Those include Interrogatory No. 15 (State all facts, identify the persons with knowledge of these facts and documents that support these facts “for each denial of a material allegation and each special or affirmative defense in your pleadings”); and 17.1 (State all facts, identify the persons with knowledge of these facts and documents that support these facts “for each response [to Plaintiff’s Requests for Admission] that is not an unqualified admission”).

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).

\* \* \*

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7

(commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Code of Civil Procedure § 2023.030(b) and (c) address relevant available sanctions for the failure to respond to interrogatories as a misuse of the discovery process, as follows:

(b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.

(c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

Although Defendant filed a general denial in her Answer to the Complaint, the Attachment to the Answer (Judicial Council Form MC-025) indicated potential affirmative defenses including contesting the validity of the foreclosure on the property. The court grants Plaintiff's request to issue an Order preventing Defendant from introducing designated matters into evidence that are covered by Form Interrogatories No. 15 and 17.1.

Plaintiff has not requested monetary sanctions; however, the imposition of sanctions pursuant to Code of Civil Procedure § 2033.080 is not discretionary. Accordingly, the court awards Plaintiff's costs for filing the motion.

**TENTATIVE RULING #10: PLAINTIFF'S MOTION IS GRANTED AS FOLLOWS:**

- (1) THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION NOS. 1, 2, 3, 4, 5, 6 ARE DEEMED ADMITTED;**
- (2) PLAINTIFF'S EXHIBITS 4, 5, 6, 7, AND 8 ARE DEEMED GENUINE;**
- (3) DEFENDANT MAY NOT INTRODUCE MATTERS INTO EVIDENCE THAT ARE COVERED BY FORM INTERROGATORIES NO. 15 AND 17.1;**
- (4) PLAINTIFF'S COSTS IN FILING THE MOTION ARE GRANTED AS SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE § 2033.280(C).**

**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. 23CV2147 NAME CHANGE OF KENDRICK**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on December 8, 2023.

Proof of publication was filed on January 29, 2024, as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

**TENTATIVE RULING #11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 29, 2024, IN DEPARTMENT NINE TO ALLOW PETITIONER TIME TO FILE A BACKGROUND CHECK WITH THE COURT.**

**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. 22CV1032 ROCKY TOP RENTALS, LLC v. PRATHER-RESOVICH**

**Writ of Possession Hearing**

On July 26, 2022, Plaintiff filed an action for Claim and Delivery based on the rental of a portable storage building to Defendant; Plaintiff alleges that Defendant has not made a rental payment since August 15, 2020. On October 25, 2022, Plaintiff filed a Notice and Application for Writ of Possession.

At a hearing on March 6, 2023, the court noted that there is no proof of service of the Summons and Complaint, or of the Notice and Application for Writ of Possession on file with the court. At the Plaintiff's request the court continued the hearing to allow Plaintiff to serve Defendant with notice of the application.

On June 15, 2023, Plaintiff filed a declaration of due diligence that described four unsuccessful attempts over the course of ten days to personally serve the Defendant at the last-known address, the address that had been provided on the rental application form.

Code of Civil Procedure § 512.030 governs service of process for writ of possession. It requires service of the Summons and Complaint and the Notice of Application and Hearing to be served personally on the Defendant prior to the hearing. If the Defendant has not appeared and personal service is required, "service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5."

Code of Civil Procedure § 415.20 provides a mechanism for leaving a copy of a Summons and Complaint at the address of the person to be served if personal service cannot be completed; however, that section requires leaving it at the location "in the presence of a competent member of the household or a person apparently in charge of his or her office." In this case the process server never saw another person at the property.

On January 19, 2024, Plaintiff filed an Application for Publication, requesting authority to make service by publication, and the court granted the application on January 22, 2024. Code of Civil Procedure § 415.50 provides that service by publication is deemed complete as provided in Government Code § 6064. Government Code § 6064 in turn provides that "[p]ublication of notice pursuant to this section shall be once a week for four successive weeks."

**TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024 IN DEPARTMENT NINE.**

**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.**

**13. 23CV0587 PATTERSON v. SIERRA AT TAHOE**

**Approval of PAGA Settlement**

Labor Code § 2669(l) requires court approval of Private Attorneys General Act (“PAGA”) settlements, which are binding on the named employee as well as any Aggrieved Employees (as defined in the Settlement Agreement) who are not a party of the proceeding. Arias v. Superior Court (2009) 46 Cal.4<sup>th</sup> 969; Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4<sup>th</sup> 348.

In this case, Plaintiffs have made claims with respect to alleged violations of laws governing:

- (1) Minimum wages;
- (2) Overtime;
- (3) Rest periods;
- (4) Meal periods;
- (5) Record keeping;
- (6) Untimely wages;
- (7) Waiting time penalties;
- (8) Reimbursement;
- (9) Wage statements; and
- (10) Sick pay

**Summary of Proposed Settlement**

The proposed settlement is for a gross amount of \$175,000.00, which is proposed to be allocated as follows:

- Attorney’s Fees not to exceed \$58,333.33 calculated as one third of the total common fund of \$175,000
- Costs in the amount of \$9,017.40
- Settlement Administration Costs in the amount of \$5,500.00
- PAGA representative service payment to the named Plaintiff not to exceed \$10,000.00
- The net settlement amount (approximately \$91,149.27) to be distributed 75 percent (approximately \$69,111.95) to the Labor Workforce Development Agency (“LWDA”) and 25 percent (approximately \$23,037.32) to Aggrieved Employees.
- The portion to be divided among Aggrieved Employees will be determined by dividing the number of pay periods worked by an Aggrieved Employee during the PAGA period by the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA pay period and apportioning the total amount to be allocated to Aggrieved Employees accordingly.
- The Settlement Administrator will identify Aggrieved Employees from Defendant’s records and send each of them a cover letter with their payment. It is estimated that there will be

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approximately 683 current and former Aggrieved Employees. These payments will be treated as non-wage income and reported on IRS Form 1099.

- Defendant will be provided with a release as to these claims by these Aggrieved Employees.

Based on the record before the court, the court approves the Settlement Agreement and makes the following findings:

- (1) This court has jurisdiction over the proposed Settlement Agreement;
- (2) The LDWA has been provided with notice of the proposed Settlement Agreement and that its share of the settlement in the amount of \$69,111.95 is fair and reasonable;
- (3) The Aggrieved Employee payment share of the settlement amount is fair and reasonable;
- (4) The Representative Plaintiff's payment amount of \$10,000 is fair and reasonable;
- (5) The proposed Settlement Agreement includes a release of Released Claims by Aggrieved Employees of the Released Parties, as defined in the Settlement Agreement;
- (6) Jonathan Melmed and Laura M. Supanich of Melmed Law Group P.C. are approved as PAGA Counsel;
- (7) The attorney's fees in the amount of \$58,333.33, calculated as one third of the total common fund of \$175,000, and costs in the amount of \$9,017.40 are fair and reasonable and the Settlement Administrator is authorized to make these payments in accordance with the terms of the Settlement Agreement;
- (8) The Gross Settlement Amount, the Net Settlement Fund and the methodology used to calculate payments to the respective parties is approved;
- (9) Simpluris is approved as Settlement Administrator and payment in the amount of \$5,500 for those services is approved;
- (10) The Settlement Administrator is authorized to calculate the Net Settlement Amount, inclusive of the LWDA payment, the Representative Plaintiff payment and the Aggrieved Employee payment, and to make those payments in accordance with the terms of the Settlement Agreement.
- (11) A Certificate of Completion is required to be filed with the court on a date to be determined at the hearing.

**TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024 IN DEPARTMENT NINE IN ORDER TO DETERMINE THE SCHEDULE FOR THE DEADLINE FOR FILING CERTIFICATION OF COMPLETION AND ANY OTHER DETAILS TO BE INCLUDED IN THE FINAL ORDER APPROVING THE SETTLEMENT AGREEMENT.**

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