03-08-24
Dept. 9
Tentative Rulings

**1. 23CV2009 ADOPTION PETITION OF CAVENDAR**

**Petition for Authorization to Inspect Birth Certificate**

Petitioner submitted a verified Petition requesting court authorization to inspect her original birth certificate.

Health & Safety Code § 102705 governs adoption records as follows:

> All records and information specified in this article, other than the newly issued birth certificate, shall be available only upon the order of the superior court of the county of residence of the adopted child or the superior court of the county granting the order of adoption.
>
> No such order shall be granted by the superior court unless a verified petition setting forth facts showing the necessity of the order has been presented to the court and good and compelling cause is shown for the granting of the order. The clerk of the superior court shall send a copy of the petition to the State Department of Social Services and the department shall send a copy of all records and information it has concerning the adopted person with the name and address of the natural parents removed to the court. The court must review these records before making an order and the order should so state. If the petition is by or on behalf of an adopted child who has attained majority, these facts shall be given great weight, but the granting of any petition is solely within the sound discretion of the court.
>
> The name and address of the natural parents shall be given to the petitioner only if he or she can demonstrate that the name and address, or either of them, are necessary to assist him or her in establishing a legal right.

The Clerk of the court attempted to forward the Petition to the State via electronic mail; however, the message bounced back. The Clerk has attempted to locate the correct location for which to send the Petition and will continue to do so. The court is not able to approve the Petition prior to receipt of the requested documents from the State.

**TENTATIVE RULING #1: THE MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 7, 2024, IN DEPARTMENT NINE, IN ORDER TO ALLOW TIME TO SEND THE PETITION TO THE STATE AND TO RECEIVE A RESPONSE.**

**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.**

**2. PC20170230 ARNAUT v. THORNE, ET AL**

**Order to Show Cause**

This case originated as a compromise of minors' claim. According to the Declaration of Peter Tieman, dated and filed on May 20, 2022, the Order approving the compromise of minors' claim, dated July 31, 2020, became impossible to implement because the selected location at which the funds were to be deposited into a blocked account was closed due to COVID. Further, the Plaintiffs moved to Texas in 2020. A Guardian ad Litem for the two minors was appointed on April 28, 2022.

According to the Declaration of Carmen Olmedo, dated June 2, 2023, and filed on June 6, 2023, there was a delay caused by the need to get the minors' social security numbers, which was accomplished on June 2, 2023, and with that information the declarant anticipated being able to open the minors' bank accounts.

At the hearing on June 9, 2023, Plaintiff indicated that the parties were working toward resolution and requested a continuance.

On February 28, 2024, Plaintiffs' counsel for Daniel Arnaut by and through his guardian ad litem Amber Johnson (Evelyn Arnout having since reached the age of majority), filed a Declaration stating that as to Daniel Arnaut, the check was delivered to the depository US Bank on August 30, 2023, but that counsel has not yet received confirmation of the deposit into Daniel Arnaut's blocked account. They anticipate "having Plaintiff Daniel Arnaut's bank account completed in 90 days." Declaration of Carmen D. Olmedo, dated February 29, 2024. Counsel's Declaration does not reference the status of payment to Plaintiff Evelyn Arnaut.

**TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 8, 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).**

**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.**

**3. 22CV0103 GUNN v. GARDNER**

**Prove Up Hearing**

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 8, 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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**4. 23CV0065 KENT v. KANNAN**

**Motion to Set Aside Ruling on Submitted Matter**

On December 15, 2023, the court issued a Ruling On Submitted Matter ordering Plaintiff to pay Defendant $3,200 for attorney's fees related to her denied restraining order request under Code of Civil Procedure (CCP) § 527.6(s). On January 29, 2024, Plaintiff filed a motion to set aside the ruling, arguing that she was never served with the motion for attorney's fees and therefore did not have an opportunity to respond. Defendant has not filed a response to the motion to set aside.

The court is mindful of the strong public policy in favor of resolving cases on their merits. The court finds under CCP § 473(b) that Plaintiff failed to respond to the motion for attorney's fees due to her mistake, inadvertence, surprise, or excusable neglect and therefore sets aside the December 15, 2023 order. To allow parties to file any additional pleadings on the issue, if appropriate, the court continues the matter to April 12, 2024 to resolve the attorney's fees motion. If neither party files any new pleadings, the court will rely on the pleadings already filed on this issue.

**TENTATIVE RULING #4: THE MOTION TO SET ASIDE IS GRANTED. A HEARING ON THE MATTER IS SET FOR 8:30 A.M. ON FRIDAY, APRIL 12, 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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**APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**5. 23CV0064 KENT v. KANNAN**

**Motion to Set Aside Ruling on Submitted Matter**

On December 15, 2023, the court issued a Ruling On Submitted Matter ordering Plaintiff to pay Defendant $3,200 for attorney's fees related to her denied restraining order request under Code of Civil Procedure (CCP) § 527.6(s). On January 29, 2024, Plaintiff filed a motion to set aside the ruling, arguing that she was never served with the motion for attorney's fees and therefore did not have an opportunity to respond. Defendant has not filed a response to the motion to set aside.

The court is mindful of the strong public policy in favor of resolving cases on their merits. The court finds under CCP § 473(b) that Plaintiff failed to respond to the motion for attorney's fees due to her mistake, inadvertence, surprise, or excusable neglect and therefore sets aside the December 15, 2023 order. To allow parties to file any additional pleadings on the issue, if appropriate, the court continues the matter to April 12, 2024 to resolve the attorney's fees motion. If neither party files any new pleadings, the court will rely on the pleadings already filed on this issue.

**TENTATIVE RULING #5: THE MOTION TO SET ASIDE IS GRANTED. A HEARING ON THE MATTER IS SET FOR 8:30 A.M. ON FRIDAY, APRIL 12, 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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**6. 23CV0744 FAGAN v. HOWARD**

**Motion to Deem Admitted Matters in Requests for Admissions**

**See Related Case, Tentative Ruling No. 12.**

This case originates in a contract for the purchase and sale of restaurant assets. In the course of the litigation, Defendant Josh Williams served discovery requests on each of the two Plaintiffs, including Requests for Admissions, Set One, on August 4, 2023. Defendant's counsel negotiated extensions of a response deadline with Plaintiffs' counsel, but Plaintiffs' counsel eventually became unresponsive and no responses to the requested discovery have been received. *See* Declaration of Christopher J. Moenig, dated February 8, 2024.

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). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (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.

Under Code of Civil Procedure § 2033.280(b), Defendant is entitled to an Order deeming the matters listed in the Requests for Admissions to be admitted. Defendant also requests

sanctions for misuse of discovery. An order of sanctions is mandatory absent a finding by the court that the imposition of the sanction would be unjust or that there was substantial compliance with the discovery request. Plaintiffs failed to file a response, so the court cannot make any findings to negate the imposition of sanction.

Defendant's counsel filed declarations seeking sanctions based on 2.2 hours of attorney work at $285 per hour plus the $60 filing fee for Plaintiff Mike Fagan and based on 0.4 hours of attorney work at $285 per hour plus the $60 filing fee for Plaintiff Vicki Fagan. The court reasonably infers that the lesser amount of work for Vicki Fagan was due to the fact that the issues related to both Plaintiffs overlap and therefore less work was required for the second motion. The court finds that a reasonable amount of attorney work per the court's independent assessment is 2 hours. The court finds that the billable rate is appropriate for the El Dorado County legal community and the for the experience of the attorney. The court finds that the reasonable amount of sanctions to award, including the $120 in filing fees, is $690, which the court will allocate equally to both parties. The court orders each Plaintiff to pay $345 in sanctions to Defendant, payable by April 8, 2024.

**TENTATIVE RULING #6: DEFENDANT'S MOTIONS TO DEEM MATTERS ADMITTED ARE GRANTED. THE COURT ORDERS EACH PLAINTIFF TO PAY $345 IN SANCTIONS TO DEFENDANT, PAYABLE BY APRIL 8, 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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**7. PC20190520 CRANDELL v. WESTERN SLOPE HEALTH, ET AL**

**Motion for Calendar Preference**

Plaintiffs have filed a motion for calendar preference pursuant to Code of Civil Procedure § 36(a), which states:

> A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
> (1) The party has a substantial interest in the action as a whole.
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

Defendants oppose the motion on the grounds that 1) the case should be resolved through arbitration, 2) there is no showing that Plaintiffs suffer from health issues justifying a calendar preference, and 3) the interests of justice do not support granting Plaintiffs' motion.

Having denied Defendants' motion to compel arbitration, and based upon the pleadings and declarations filed in support of this motion, (*see,* Declaration of Thomas A. Reyda, dated January 30, 2024), the court finds that the Plaintiffs both have a substantial interest in the action as a whole, the health of both Plaintiffs is such that the preference is necessary to prevent prejudicing their interest in the litigation, and that the interest of justice favor granting the motion.

**TENTATIVE RULING #7: PLAINTIFFS' MOTION FOR CALENDAR PREFERENCE IS GRANTED. THE PARTIES ARE ORDERED TO APPEAR TO SET A TRIAL DATE.**

**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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**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. PC20210067 SANG v. SARGENT**

**Compromise of Minor's Claim**

At the hearing on February 23, 2024, the court continued the matter to allow Petitioners to file documentation required by the Local Rules of the El Dorado County Superior Court as listed in the February 23, 2024, Tentative Ruling for that hearing.

The court continued the matter, and having found that the parties knowingly and voluntarily agree with the compromise, found no further need for the minors to appear at the continued hearing.

On February 23, 2023, Plaintiff's Counsel filed a Declaration with documentation attached. However, the court needs clarity on a few items related to the medical costs. The court orders counsel to appear at the March 8, 2024 hearing. The appearance may be in person or remote.

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

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**9. 23CV0856 RODRIGUES ET AL v. HOLBERT**

**Attorney Withdrawal**

Counsel for the Plaintiffs 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 there has been an irreconcilable breakdown in the attorney-client relationship, and that "consent to file substitution for clients to represent themselves has not been unambiguously provided."

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 Plaintiffs at their last known address and on counsel for Defendant was filed on January 25, 2024.

A Case Management Conference is currently scheduled for the case on March 12, 2024, in Department 10. A trial date has not been set.

**TENTATIVE RULING #9: ABSENT OBJECTION, THE MOTION IS GRANTED, EFFECTIVE AS OF THE DATE OF FILING THE PROOF OF SERVICE INDICATING SERVICE OF THE FILED ORDER ON THE CLIENT. 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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**10. 23CV1183 SAMBOY v. HALL WINDOW CENTER, INC.**

**(1) Motion to Strike**

**(2) Demurrer**

The parties entered into a contract for the replacement of several windows in Plaintiff's home, and the work was completed in July, 2022. FAC ¶ 10. On November 11, 2022, Plaintiff noticed water intrusion around the windows and notified Defendant of the problem. FAC ¶15, Exhibit 2. On November 14, 2022, Defendant attempted to repair the problem by adding additional sealant. FAC, Exhibit 2. On December 1, 2022, Defendant attempted further repairs by removing the interior trim, which revealed defective sizing and installation. FAC, Exhibit 2. It was later determined that the deficiencies could not be repaired, and the windows would need to be replaced. Id.

On December 22, 2022, Defendant sent a full refund of the contract amount, which Plaintiff refused to accept. Defendant's insurance carrier then offered Plaintiff a payment of $22,993.28, which Plaintiff again refused to accept. Id. Plaintiff began experiencing respiratory problems in December 2022. FAC ¶21. Tests of Plaintiff's home in March 2023 revealed elevated levels of mold in areas that experienced water intrusion around the windows installed by Defendant. FAC ¶20.

On June 8, 2023, Plaintiff sent a demand letter to Defendant pursuant to Civil Code § 1782. That notice is attached to the FAC as Exhibit 2. Exhibit 2 stated that the damages were caused by undersized windows that were unevenly installed and sealed with an "improper sealant", which combined to permit leakage of water into Plaintiff's home.

The original Complaint was filed on July 17, 2023.

Plaintiff filed a First Amended Complaint (FAC) on January 12, 2024, after Defendant filed these two motions on September 27, 2023. To some extent this amended Complaint resolves some of the issues raised in the motions. For example, the FAC does not include a claim for punitive damages, so that issue is no longer before the court.

The FAC includes causes of action for negligence, negligent breach of contract, and false advertising. Plaintiff lists compensatory damages in the amount of $385,000 for costs to remove, repair and replace the windows and items and structures damages by water within the home, $29,000 in additional repair costs, $60,000 tax liability because she had to withdraw retirement savings to make the repairs, and $60,000 for medical expenses and pain and suffering for mold exposure as a result of the water damage.

Demurrer

Defendant has filed a demurrer to the Third Cause of Action in the FAC alleging false advertising in violation of the Consumer's Legal Remedies Act ("CLRA"), Civil Code §§ 1750 et seq.

The basis for the demurrer is Civil Code § 1782(a), which sets out a prerequisite to the filing of an action for damages under the CLRA. Defendant argues that Plaintiff did not meet the statutory requirements prior to bringing this claim for violations of the CLRA.

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.)
>
> 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).

Defendant argues that Exhibit 2 to the FAC shows that Plaintiff did not meet the requirements of Civil Code § 1782(a), which require certain prerequisites to bringing an action for deceptive practices:

> Thirty days or more prior to the commencement of an action for damages pursuant to this title, the consumer shall do the following:
>
> (1) Notify the person alleged to have employed or committed methods, acts, or practices declared unlawful by Section 1770 of the particular alleged violations of Section 1770.
>
> (2) Demand that the person correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770.
>
> The notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California.

Civil Code § 1782(b) further provides:

> Except as provided in subdivision (c), no action for damages may be maintained under Section 1780 if an appropriate correction, repair, replacement, or other remedy is

given, or agreed to be given within a reasonable time, to the consumer within 30 days after receipt of the notice.

In this case, Defendant argues, the June 8, 2023 letter to Defendant does not meet the plain language of the statute because it does not contain a demand to "correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770", and thus does not permit Plaintiff to maintain an action under Civil Code sections 1770 and 1782. The letter at issue demanded that Defendant "correct and rectify the damages caused by its false advertising by paying Ms. Samboy the sum of $379,943.06 within thirty (30) days from the date of this letter." Apart from that financial demand, the letter demanded that Defendant collect and preserve its business records that would be relevant to litigation.

The question, then, is whether the June 8, 2023, demand for a financial payment of damages met section 1782(a)'s statutory requirement of a demand that Defendant "correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770."

Defendant cites the unpublished federal District Court case of Turunen v. Elite Auto Body & Collision Ctr., No. 03-4862 MMC, 2005 WL 851024 (N.D. Cal. Apr. 13, 2005) as persuasive if not controlling authority. The court cannot rely on Turunen because it is an unpublished opinion.

Plaintiff counters with multiple authorities in support of the adequacy of the 1782(a) notice.

In DeNike v. Mathew Enter., Inc., 76 Cal. App. 5th 371 (2022) the appellate court overruled a trial court that allowed a plaintiff's claim for restitution to go to the jury once it had found that the defendant in that case had made a statutorily sufficient response to the plaintiff's § 1782(a) demand. That case held that the phrase "action for damages" includes damages such as restitution. The trial court had found that the defendant had made an appropriate offer to correct the defective goods and cover the plaintiff's costs, and thus the plaintiff was thereafter precluded from maintaining an "action for damages" under § 1782(b). The trial court nevertheless allowed an action for restitution, on the theory that restitution is a remedy separate from "damages." The appellate court disagreed. That holding does not serve our purposes in this case to answer the question as to whether a demand for the payment of money damages is contained within section 1782(a)'s phrase, "correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770."

In Valdez v. Seidner-Miller, Inc., 33 Cal. App. 5th 600 (2019) the court considered the adequacy of the defendant's offer of correction under section 1782(b), finding that the defendant overreached by conditioning the offer of correction on plaintiff's waiver of rights unrelated to the CLRA. The court did not address or reach any conclusion regarding the adequacy of the pre-litigation notice required by section 1782(a).

The same is true of the holding in Benson v. S. California Auto Sales, Inc., 239 Cal. App. 4th 1198 (2015). In that case the plaintiff appeared to anticipate the question we face in this case by sending two letters on the same date. One letter demanded recission of the vehicle purchase agreement, a $5,000 penalty and payment of unspecified amounts of incidental damages and was "written 'to comply with California Civil Code [section] 1782(a)'". The plaintiff sent a second letter on the same date proposing a settlement for payment of a specified amount that did not demand recission but offered to return the vehicle upon payment of the settlement amount. The court had no opinion on the legal effect of the plaintiff's two letters or whether they met the requirements of section 1782(a). The issue in that case was whether the defendant's response was a statutorily adequate offer of correction, and if it was, whether the plaintiff could also seek reimbursement of attorney's fees even though the problem had been corrected by the defendant. The adequacy of the section 1782(a) notice was not at issue, and as discussed above, the plaintiff's attorneys addressed the issue of demanding correction as compared to demanding payment of damages by sending two separate letters.

In Flores v. Southcoast Auto. Liquidators, Inc., 17 Cal. App. 5th 841 (2017) the CLRA plaintiff sent a section 1782(a) letter demanding that defendant return all the funds that she had paid for the vehicle, and pay incidental, consequential, and actual damages that she had suffered due to defendant's violations of the CLRA, as well as her legal costs and attorney fees.

The cases cited by Plaintiff do not include legal determinations of the adequacy of section 1782(a) letters under the CLRA. While in each of these cases the demand letters do include demands for sums of money characterized as "penalties", incidental, consequential and actual damages, reimbursement of payments made under the subject contracts, legal costs and attorney's fees, they also uniformly demand return to the status quo with respect to the goods and/or services at issue. DeNike, Valdez and Benson demanded recission of the purchase agreement and refund of payments they had made on the purchased vehicle. Flores demanded a refund of amounts she had paid for the vehicle.

Plaintiff further argues that Defendant's offers of correction were not legally sufficient because they were made before the June 8, 2023, date of Plaintiff's demand letter. That argument pre-supposes that the notice itself was legally adequate, such that the June 8, 2023 letter started the 30-day period during which Defendant had an opportunity to offer corrections before Plaintiff would be entitled to bring an "action for damages" under the statute. However, the Defendant would not be under an obligation to provide a legally adequate correction until the Plaintiff had provided legally adequate notice.

The court finds that Plaintiffs notice did not give Defendant an opportunity to "correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770" and for that reason Defendant's demurrer to the Third Cause of Action is sustained with leave to amend.

Motion to Strike

> The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strikeout any irrelevant, false, or improper matter inserted in any pleading.

Code of Civil Procedure § 436(a).

Defendant moves to strike claims for attorney's fee and injunctive relief associated with Plaintiff's Third Cause of Action. Defendant cites Civil Code § 1784:

> No award of damages may be given in any action based on a method, act, or practice declared to be unlawful by Section 1770 if the person alleged to have employed or committed such method, act, or practice (a) proves that such violation was not intentional and resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any such error and (b) makes an appropriate correction, repair or replacement or other remedy of the goods and services according to the provisions of subdivisions (b) and (c) of Section 1782.

Defendant notes that Exhibit 2 to the FAC, dated June 8, 2023, states that on November 14, 2022, Defendant sent a person to Plaintiff's home to attempt a repair, and when that failed sent a check for $12,000 on December 22, 2022, as full refund of the contract price for the window installation. When Plaintiff refused that payment, on Defendant's insurance carrier sent a check for $22,993.28, which Plaintiff also refused to accept. In short, Defendant argues, it attempted to cure the defect beginning on November 14, 2022, when it was first put on notice of the defective windows. Thus, Defendant argues that it has complied with the conditions of Civil Code §§ 1782, 1784 and for that reason Plaintiff is barred for suing for damages under the CLRA statutes.

The court finds that, having sustained the demurrer to the Third Cause of Action, all claims for damages under that Cause of Action should be stricken from the FAC.

**TENTATIVE RULING #10:**

1. **DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND WITHIN TEN DAYS OF THE COURT'S ORDER.**
2. **DEFENDANT'S MOTION TO STRIKE 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.**

**11. PC20210440 HARRIS v. PROGRESS HOUSE**

**Summary Judgment**

**TENTATIVE RULING #11: IN ORDER TO ALLOW THE COURT AN OPPORTUNITY TO REVIEW RECENTLY FILED PLEADINGS, THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 15, 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. 23CV0744 FAGEN v. HOWARD, ET AL**

**Motion to Compel Discovery Responses**

**See Related Case, Tentative Ruling No. 6.**

As discussed above, this case originates in a contract for the sale of restaurant assets, including equipment, furniture and a beer and wine license. In the course of the litigation, Defendant Josh Williams served discovery requests on each of the two Plaintiffs, including Form Interrogatories and Requests for Production of Documents, on August 4, 2023. Defendant's counsel negotiated extensions of a response deadline with Plaintiffs' counsel, but Plaintiffs' counsel eventually became unresponsive and no responses to the requested discovery have been received. *See* Declaration of Christopher J. Moenig, dated November 7, 2023.

Defendant Williams filed motions to compel as to each of the two Plaintiffs pursuant to Code of Civil Procedure §§ 2030.290 and 2031.300, and has requested monetary sanctions.

Interrogatories

Code of Civil Procedure § 2030.290 provides:

> If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The party propounding the interrogatories may move for an order compelling response to the interrogatories.
>
> (c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one

> subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

Requests for Production of Documents

Code of Civil Procedure §§ 2031.300 provides:

> If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:
>
> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The party making the demand may move for an order compelling response to the demand.
>
> (c) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

> (d)(1) Notwithstanding subdivision (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system.
>
> (2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

Pursuant to Code of Civil Procedure §§ 2031.300(b) and § 2030.290(b), Defendant's motions to compel are granted as to both Plaintiffs. The court orders Plaintiffs to file code-compliant response by April 8, 2024.

Defendant also requests sanctions. An order of sanctions is mandatory absent a finding by the court that the imposition of the sanction would be unjust or that there was substantial compliance with the discovery request. Plaintiffs failed to file a response, so the court cannot make any findings to negate the imposition of sanction.

Defendant's counsel filed declarations seeking sanctions based on 8.6 hours of attorney work at $285 per hour plus the $60 filing fee for Plaintiff Mike Fagan and based on 0.5 hours of attorney work at $285 per hour plus the $60 filing fee for Plaintiff Vicki Fagan. The court reasonably infers that the lesser amount of work for Vicki Fagan was due to the fact that the issues related to both Plaintiffs overlap and therefore less work was required for the second motion. The court finds that a reasonable amount of attorney work per the court's independent assessment is 3.5 hours. The court finds that the billable rate is appropriate for the El Dorado County legal community and the for the experience of the attorney. The court finds that the reasonable amount of sanctions to award, including the $120 in filing fees, is $1,117.50, which the court will allocate equally to both parties. The court orders each Plaintiff to pay $558.75 in sanctions to Defendant, payable by April 8, 2024.

**TENTATIVE RULING #12: DEFENDANT'S MOTIONS TO COMPEL ARE GRANTED. THE COURT ORDERS PLAINTIFFS TO FILE CODE-COMPLIANT RESPONSE BY APRIL 8, 2024. THE COURT ORDERS EACH PLAINTIFF TO PAY $558.75 IN SANCTIONS TO DEFENDANT, PAYABLE BY APRIL 8, 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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**13. PC20190520 CRANDELL v. WESTERN SLOPE HEALTH, ET AL**

**(1) Demurrer**
**(2) Motion to Compel Arbitration**

This matter arises from injuries allegedly resulting from Plaintiff Peggy Crandall's residence at Defendants' rehabilitation facility ("Western Slope") to recover from surgery. FAC ¶24. The facility was licensed as a skilled nursing facility as defined by Health and Safety Code § 1250(c). FAC ¶3. Ms. Crandall was age 73 at the time, and thus qualified as an "elder" under Welfare and Institutions Code § 15600. FAC ¶1. Mrs. Crandall resided at the Western Slope facility for the period of one month, between October 16, 2017, and November 16, 2017. FAC ¶¶24-25. She left Western Slope because she required further medical treatment when her surgical wounds became infected, requiring multiple follow-up surgeries and eventual amputation of her leg. FAC ¶25. Plaintiffs allege that her injuries were a result of Defendants' negligence, neglect, constructive fraud and violation of her rights as a patient, and further claim negligent infliction of emotional distress and loss of consortium on behalf of her husband, Plaintiff Steve Crandall.

The original Complaint in this action was filed on October 4, 2019, but was not finally served on all parties until January 28, 2021. It was filed on a Judicial Council form and included only causes of action for "negligence" and "elder abuse." It was filed more than one year, and less than two years after Plaintiff's departure from Defendant's facility. The factual allegations in the original Complaint were as follows:

> Negligent care and treatment; neglected wound care resulting in infection and further surgery. . . . The lack of proper care was reckless, willful, grossly negligent, deliberate and intentional. Defendants caused and permitted physical pain and mental suffering to Plaintiff, all to her damage in an amount o be ascertained.

The First Amended Complaint ("FAC") was filed on December 13, 2023. Soon thereafter, on January 17, 2024, the Defendants filed a motion to compel arbitration, followed shortly thereafter by a demurrer to the FAC.

**Demurrer**

Defendants demur to the Third Cause of Action (Custodial Negligence), Fourth Cause of Action (Constructive Fraud), Sixth Cause of Action (Negligent Infliction of Emotional Distress) and Seventh Cause of Action (Loss of Consortium). Defendants additionally argue that the September 26, 2023 amendment of the Complaint to add seven additional Doe Defendants is subject to demurrer based on the application of the statute of limitations.

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.)
>
> 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).

Statute of Limitations

The basis for the demurrer to the Third Cause of Action (Custodial Negligence) is the application of a one-year statute of limitations under Code of Civil Procedure § 340.5.[1] Section 340.5 applies to claims for professional negligence, defined as:

> [A] negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

Code of Civil Procedure § 340.5(2).

A cause of action for negligence includes 1) the existence of a duty, 2) a breach of that duty, 3) injury to the plaintiff caused by the defendant's breach, and 4) actual damages. Romero v. Los Angeles Rams, 91 Cal. App. 5th 562, 567 (2023). When determining the breach of a duty, courts are required to consider a standard of care that would be exercised by "a reasonably prudent person under like circumstances." Regents of Univ. of California v. Superior Ct., 29 Cal. App. 5th 890, 903 (2018). In this case, "like circumstances" would involve a professionally licensed facility caring for post-surgical patients who require conditions that would avoid infection. It is hard to avoid the application of a "professional" standard of care to the conduct of a licensed nursing facility under these circumstances, nor has the court found any cases that involve a cause of action for "custodial

[1] "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. . . .: Code of Civil Procedure § 340.5.

negligence" that applies a non-professional standard of care to a facility similar to that of the Defendants.

Plaintiffs argues that they are not making any allegation of professional negligence, but rather that "the gravamen of this case is custodial neglect that is actionable under the Elder Abuse and Dependent Act ("Elder Abuse Act")." The court agrees the actionable conduct comes within the allegations of the First and Second Causes of Action under the Welfare and Institutions Code, which, as Plaintiff notes, "covers an area of misconduct distinct from 'professional negligence'." The Elder Abuse Act causes of action are not subject to Defendants' demurrer.

Because negligence claims directed at health care provided by a professional facility necessarily implicates professional negligence, Code of Civil Procedure § 340.5 applies to bar those claims. Accordingly, Defendants' demurrer to the Third Cause of Action is sustained without leave to amend.

The basis for the demurrer to the Fourth Cause of Action (Constructive Fraud) is the application of a three-year statute of limitations under Code of Civil Procedure § 338(d).[2] The basis for this claim in FAC are the allegations that the Defendants concealed from Plaintiffs that the facility was operated in a manner to prioritize profits over patient care (FAC ¶58), and that it was not capable of properly caring for her due to a lack of staff, training and supervision, evidenced by numerous complaints (FAC ¶59).

This cause of action was not included in the original Complaint, which was filed on a Judicial Council form and did not include any factual allegations related to Defendant's representations or omissions.

> An amendment filed after the statute of limitations has run will be deemed filed as of the date of the original complaint "provided recovery is sought in both pleadings on the same general set of facts." (*Austin v. Massachusetts Bonding & Insurance Co*. (1961) 56 Cal.2d 596, 600 [15 Cal.Rptr. 817, 364 P.2d 681].) A newly pled cause of action rests upon the same facts when it involves the same accident and the same offending instrumentality. (*Goldman v. Wilsey Foods, Inc.* (1989) 216 Cal.App.3d 1085, 1094 [265 Cal.Rptr. 294].)

Kim v. Regents of Univ. of California, 80 Cal. App. 4th 160, 168 (2000).

The Kim case considered whether an amended Complaint with a newly included age discrimination claim related back to the original Complaint to recover overtime payment pursuant to statutory and contractual rights. The court found that "[w]hile there is just one

[2] "Within three years: . . . (d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." Code of Civil Procedure § 338(d).

employer and one termination", the wrongful conduct underlying alleged age discrimination "does not arise out of the same set of facts that support Kim's contractual and overtime claims." Kim v. Regents of Univ. of California, 80 Cal. App. 4th at 169. The same is true in this case, where allegations of representations and/or omissions are a distinct instrumentality from the alleged neglect of physical care. *See* also, Davaloo v. State Farm Ins. Co., 135 Cal. App. 4th 409 (2005):

> The requirement that the complaint allege ultimate facts forming the basis for the plaintiff's cause of action is central to the relation-back doctrine and the determination whether an amended complaint should be deemed filed as of the date of the original pleading. (See *Bartalo v. Superior Court* (1975) 51 Cal.App.3d 526, 533, 124 Cal.Rptr. 370 [explaining essential role of fact-pleading requirement in application of relation-back doctrine].) An amended complaint relates back to a timely filed original complaint, and thus avoids the bar of the statute of limitations, only if it rests on the same general set of facts and refers to the same "offending instrumentalities," accident and injuries as the original complaint.

Davaloo v. State Farm Ins. Co., 135 Cal. App. 4th at 415.

For these reasons, the Defendants' demurrer is sustained as to the Fourth Cause of Action without leave to amend.

Defendants demur to the Sixth Cause of Action (Negligent Infliction of Emotional Distress) and the Seventh Cause of Action (Loss of Consortium) on the grounds that they are barred by the two-year statute of limitations under Code of Civil Procedure § 335.1.[3] These two claims are brought on behalf of Plaintiff Peggy Crandell's husband, who was not a named Plaintiff in the original Complaint. Similar to the Third Cause of Action, the Sixth and Seventh Causes of Action were not described in the original Complaint, so they cannot "relate back" to the October 4, 2019, filing date. The FAC was filed more than two years after the harm alleged in those causes of action, after the statute of limitations had expired. Accordingly, Defendants' demurrer to these causes of action are sustained without leave to amend.

Addition of Doe Defendants

Defendants seek to invalidate several causes of action as to seven Defendants newly named in the FAC (filed on December 13, 2023), due to the application of the statute of limitations as to those parties. Plaintiffs argue that the date of the original Complaint filed on October 4, 2019, is controlling as to those Defendants because of the "relation back doctrine".

> The general rule is that an amended complaint that adds a new defendant does not relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint

[3] "Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another." Code of Civil Procedure § 335.1.

> is filed. [Citations.] A recognized exception to the general rule is the substitution under section 474 of a new defendant for a fictitious Doe defendant named in the original complaint as to whom a cause of action was stated in the original complaint. [Citations.] If the requirements of section 474 are satisfied, the amended complaint substituting a new defendant for a fictitious Doe defendant filed after the statute of limitations has expired is deemed filed as of the date the original complaint was filed. [Citations.]

Woo v. Superior Ct., 75 Cal. App. 4th 169, 176 (1999).

Defendant argues that Plaintiff's September 26, 2023 addition of seven new parties through Doe amendments pursuant to Code of Civil Procedure § 474, four years after the filing of the original Complaint, was improper because Plaintiffs cannot claim to have been ignorant of the names or existence of those entities at the time they filed the original Complaint.[4] This is significant because if the addition of new Defendants is not authorized by Section 474 the claims will be defeated by application of the statute of limitations.

Plaintiffs argue that this issue is not properly raised in the context of a demurrer. However, Defendants' opposition does include at least one citation[5] to a case where this issue was decided at the demurrer stage. Organizacion Comunidad De Alviso v. City of San Jose, 60 Cal. App. 5th 783 (2021). This is an appropriate result, considering that the underlying issue is the application of the statute of limitations, which is indisputably appropriate at the demurrer stage. It would be illogical, inefficient and unfair to require parties against whom claims are time barred as a matter of law to remain in the litigation through discovery until they are eventually removed by a later pre-trial motion.

The question on this issue is whether the Plaintiffs "knew or reasonably should have known" that they had a cause of action against the newly identified defendants. Wallis v. S. Pac. Transportation Co., 61 Cal. App. 3d 782, 786 (Ct. App. 1976). Courts have held that to take advantage of Section 474, "[t]this lack of knowledge of the true name of a defendant must be real and not feigned, and must not be wilful ignorance, or such as might be removed by some inquiry or resort to information easily accessible. (*Stephens v. Berry*, 249 Cal.App.2d 474, 477, 57 Cal.Rptr. 505; *Herschfelt v. Knowles-Raymond etc. Co.*, 130 Cal.App.2d 347, 279 P.2d 104; *Mercantile Trust Company of San Francisco v. Stockton Terminal etc. Company*, 44 Cal.App. 558,

[4] "When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, or the affidavit if the action is commenced by affidavit, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly; . . ." Code of Civil Procedure § 474.

[5] Beresford Neighborhood Assn. v. City of San Mateo, 207 Cal. App. 3d 1180 (Ct. App. 1989) is a related case decided at the demurrer stage, although the court's reference to Section 474 was *dicta*, when it stated that the plaintiffs, who had not attempted a Doe amendment, would not be able to rely on Section 474 because they had been on notice of the identity of a potential defendant because of references to that entity in the minutes of city council meetings. Beresford, 207 Cal. App.3d at 1190. Similarly, while a demurrer had been filed in the case of McClatchy v. Coblentz, Patch, Duffy & Bass, LLP, 247 Cal. App. 4th 368 (2016), the court's ruling on a motion to quash service on improperly named defendants rendered the demurrer moot.

186 P. 1049; *Rosencrantz v. Rogers*, 40 Cal. 489.)" Schroeter v. Lowers, 260 Cal. App. 2d 695, 700 (Ct. App. 1968); Wallis v. S. Pac. Transportation Co., 61 Cal. App. 3d 782, 786 (Ct. App. 1976); Woo v. Superior Ct., 75 Cal. App. 4th 169, 177 (1999).

In McClatchy v. Coblentz, Patch, Duffy & Bass, LLP, 247 Cal. App. 4th 368, 372 (2016) the court noted that the plaintiff was on notice of the identity of the newly added corporate defendant because of the use of the firm's address and letterhead in correspondence with the plaintiff prior to the filing of the original complaint. In Wallis v. S. Pac. Transportation Co., 61 Cal. App. 3d 782 (Ct. App. 1976) the Doe amendment was allowed because the injured plaintiff had no reason to know the identity of the entity that maintained the railroad box car that caused his injury until he obtained access to an investigator's report and thereafter promptly amended the complaint. In Organizacion Comunidad De Alviso v. City of San Jose, 60 Cal. App. 5th 783 (2021) the court found that the plaintiff could not rely on Section 474 because it had constructive notice of the identity of a potential defendant through a public filing with the county clerk's office, noting that the plaintiff had cited "no case in which the relation back doctrine has been allowed where a party had constructive notice of the identity of a fictitiously named defendant." Id. at 795.

In this case Defendants argue that the corporate ownership structure of the defendants was publicly available on the California Department of Health website at the time that the original Complaint was filed. *See,* Health and Safety Code § 128734.1; Affordable Care Act § 6101.

Plaintiffs' apparent principal reason for the delay was that Plaintiffs obtained new counsel in 2023, which led to the amendment of the Complaint. Plaintiffs argue that Defendants must show that the naming of these entities was not in good faith, but as discussed above, the Plaintiff's actual or constructive knowledge is the test, not whether the Plaintiff acted in good faith.

The court finds that the identities of the seven newly named Defendants was publicly available information at the time of the filing of the original Complaint, of which Plaintiffs can be charged with constructive notice. Accordingly, the demurrer is sustained as to those seven Defendants because of the applicable statutes of limitations.

**Motion to Compel Arbitration**

When Peggy Crandell was admitted to Defendants' facility to recover from her surgery she was presented with and signed a six-page arbitration agreement as part of the admission process. Defendant now moves to require this case to be stayed pending arbitration pursuant to that agreement.

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.

There are several exceptions to the requirement to enforce an arbitration agreement, including a determination that "grounds exist for recission of the agreement." Code of Civil Procedure § 1281.2(b). In this case, there is substantial evidence for recission of the arbitration agreement.

Relevant portions of Civil Code § 1689 provide that recission of a contract is permitted under the following circumstances:

* * *

(b) A party to a contract may rescind the contract in the following cases:

(1) If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

* * *

(7) Under the circumstances provided for in Sections . . . 1566. . . of this code . . . .

Civil Code § 1689(b).

Civil Code § 1566 provides that "[a] consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the Chapter on Rescission."

When Peggy Crandell was admitted to Defendants' facility she had been in the hospital for the previous two weeks undergoing multiple surgeries. Declaration of Peggy Crandell, dated February 26, 2024, ¶2. She was receiving morphine and other pain medications and was "in and out of consciousness and awareness." Id. She was confused and not sure why she was being admitted to that facility instead of going home. Id., ¶3. She does not recall agreeing to arbitration or receiving any explanation of or having any understanding of rights that she was surrendering when she signed the agreement. Id., ¶4. She recalls signing "admission papers" but has no knowledge of their contents. Id., ¶5. Her daughter states that based on her direct observations, Peggy Crandell "was in no condition to comprehend anything of a legal nature, let alone something like an arbitration agreement." Declaration of Elizabeth Crandell, dated February 26, 2024, ¶5.

The Civil Code further authorizes recission in cases of undue influence, Civil Code § 1689(b)(1), which is defined to include "taking an unfair advantage of another's weakness of mind." The court finds that the conditions surrounding Peggy Crandell's signature on the arbitration agreement comes within this definition and justifies recission of the arbitration agreement.

**TENTATIVE RULING #13:**

**(1) DEFENDANTS' DEMURRER IS SUSTAINED AS TO ALL CAUSES OF ACTION ASSERTED AGAINST DEFENDANTS PLUM HEALTHCARE GROUP, LLC, BAY BRIDGE CAPITAL PARTNERS, LLC, NEW SISU HOLDCO, LLC, FLOWER FARM GROUP, LLC, GI MANAGER, L.P., GI PARTNERS HOLDINGS, LP AND GI PARTNERS FUND IV WITHOUT LEAVE TO AMEND.**

**(2) AS TO THE REMAINING DEFENDANTS, WESTERN SLOPE HEALTH CENTER AND ROSEBUD HOLDINGS, LLC, DEFENDANTS' DEMURRER TO THE THIRD, FOURTH, SIXTH AND SEVENTH CAUSES OF ACTION IS SUSTAINED WITHOUT LEAVE TO AMEND.**

**(3) DEFENDANT'S MOTION TO COMPEL ARBITRATION IS DENIED.**

**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.**

**14. 24CV0051 NAME CHANGE OF FERRARINI-TOMMASI**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on January 11, 2024.

Proof of publication was filed on February 8, 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).

The hearing on this matter is continued to allow Petitioner time to file a background check with the court.

**TENTATIVE RULING #14: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 22, 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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**15. 23CV1459 NAME CHANGE OF WEATHERSPOON**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on August 25, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner must file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication with the court.

**TENTATIVE RULING #15: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 3, IN DEPARTMENT NINE TO ALLOW PETITIONER TIME TO FILE PROOF OF PUBLICATION 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).**

**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.**

**16. 24CV0058 NAME CHANGE OF REBURIANO**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on January 12, 2024.

Proof of publication was filed on February 8, 2024**,** as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

**TENTATIVE RULING #16: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

**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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**17. 24CV0158 NAME CHANGE OF MCFARLAND RIEDEL**

**Petition for Name Change of a Minor**

Petitioner filed a Petition for Change of Name for two siblings on January 26, 2024. Both parents have joined the Petition.

Proof of publication was filed on February 21, 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 petitioners, which is required under the law. Code of Civil Procedure §1279.5(f).

**TENTATIVE RULING #17: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED PENDING COMPLETION OF A BACKGROUND CHECK.**

**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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**18. 23CV1878 NAME CHANGE OF GILES**

**Petition for Name Change of a Minor**

Petitioner filed a Petition for Change of Name for herself and a minor on October 30, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner must file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication with the court.

**TENTATIVE RULING # 18: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 12, 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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