1. 22CV1554 VEGA v. VEGA

Motion to Enforce Settlement
Demurrer

The parties, Alden ("Alden") and Nelson Vega ("Nelson") are engaged in a dispute over their tenancy-in-common interests in a single-family residence located in El Dorado County that they acquired as an investment property in 1992. Alden owns one-third and Nelson owns two-thirds interest in the property. Issues related to the income and expenses from the property are the subject of separate litigation in Monterey County, where both parties reside. The related action pending in Monterey County Superior Court (Case No. 22CV001866) was filed on June 30, 2022, before this El Dorado County Superior Court case was filed on October 17, 2022.

The Defendant/Cross-Complainant in the El Dorado County action (Nelson Vega), is the Plaintiff in the Monterey County action. The Plaintiff in the El Dorado County action (Alden Vega) is the Defendant and Cross-Complainant in the Monterey County action.

The proceedings in Monterey County Superior Court relate to causes of action for breach of contract, breach of fiduciary duty, elder abuse and common counts (related to failure to pay property expenses). This action in El Dorado County is for partition of the property and the Cross-Complaint is for quiet title or, alternatively, equitable set-off in the partition action.

Nelson's Cross-Complaint in the El Dorado County action alleges that Alden sold Nelson his interest in the property in 1993 for $32,000, and seeks quiet title to the one-third interest claimed by Alden, or int the alternative, equitable set off against Alden's interest for the property expenses to which Nelson alleges Alden failed to contribute.

Nelson was deposed on November 15, 2023, in the Monterey County case, and as part of that deposition was requested to produce any documents substantiating his position that Nelson had purchased Alden's one-third interest in the property for $32,000 in 1993. The only responsive document produced was Nelson's 1993 tax return. See Declaration of Tracy Tumlin, dated February, 7, 2024. Alden represents that he never sold his one-third interest in the property and no agreement to sell his interest prior to the March, 2023 settlement agreement. Alden Declaration, ¶5.

<u>Settlement Agreement</u>

The parties executed a settlement agreement on March 27, 2023, pursuant to which Alden agreed to sell his interest in Nelson. See Exhibit 1 to Declaration of Alden Vega ("Alden Declaration"), dated March 6, 2024. An appraisal showed a value of $474,000, which the parties stipulated to be the value of the property for the purpose of their settlement. However, Nelson

did not make the anticipated payment of $158,000, and instead filed an Answer and Cross-Complaint in this action on April 20, 2023.

Plaintiff moves to enforce the settlement agreement.

A Case Management Conference is scheduled for April 15, 2025.

Demurrer

Alden demurs to the Cross-Complaint on the following grounds:

1. Statute of Frauds – Civil Code § 1624
2. Statute of Limitations – Code of Civil Procedure §§ 430.10(c), 338, 343
3. Venue
4. Prior Settlement

The demurrer is unopposed.

At the hearing on this demurrer held on July 28, 2023, the court on its own motion continued the matter to a date that was after the date for which the Monterey County trial was then scheduled. However, the trial in Monterey County has not yet occurred. The court will continue this matter for one year to allow for resolution of the issues in that case. Following resolution of the case in Monterey County the parties can file an ex parte application for an earlier date for additional proceedings in El Dorado County, if needed.

TENTATIVE RULING #1: THIS MATTER IS CONTINUED TO 8:30 A.M. ON APRIL 18, 2025, 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.

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2. 23CV0248 DANKER ET AL v. MORRISROE ET AL

Motion to have Matters Deemed Admitted

Defendant Bohnenberger ("Defendant") moves to have matters requested in Request for Admissions, Set Two ("RFA No. 2") deemed admitted and for the award of sanctions.

RFA No. 2 was sent on February 20, 2023, and no response has been received.

No opposition to the motion has been filed.

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.

Defendant claims $1,460 in sanctions, which includes attorney's fees of $1,400 for four hours at a billing rate of $350 per hour, and a $60 filing fee. The pleadings filed in support of the motion consist of a two-page declaration with RFA No. 2 attached, and a five-page notice of motion with legal argument. The court finds that two hours would have been sufficient time to prepare the pleadings in support of the motion.

TENTATIVE RULING #2: DEFENDANT'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS GRANTED. SANCTIONS ARE GRANTED IN THE AMOUNT of $760 PAYABLE TO DEFENDANT BY MAY 17, 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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3. 24CV0481 IN THE MATTER OF TIMOTHY SAUER

Petition for Order Permitting Pre-Commencement Discovery

Petitioner requests that the Court enter an order authorizing Petitioner to engage in pre-commencement discovery, which entails service of document subpoenas to six entities that are listed in the Petition, for the purpose of preserving evidence and to trace and locate stolen funds.

Code of Civil Procedure section 2035.010(a) provides:

> One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

Section 2035.050(a) provides: "If the court determines that all or party of the discovery requested under this chapter may prevent a failure or delay of justice, it shall make an order authorizing that discovery. (Id., § 2035.050, subd. (a).)

In Petitioner's case, he intends to file an action in El Dorado Superior Court to recover funds he lost in a cryptocurrency scam, but lack sufficient information to be able to file a Complaint. The investigation of the matter is ongoing, both by Petitioner and by law enforcement, including the El Dorado County Sheriff's Office. The El Dorado County Sheriff's Office has obtained documents and things through the execution of a search warrant, and has expressed willingness to provide that information to Petitioner but only pursuant to the issuance of a subpoena.

Code of Civil Procedure section 2035.040(a) requires Petitioner to "cause service of a notice of the petition under Section 2035.030 to be made on each natural person or organization named in the petition as an expected adverse party. This service shall be made in the same manner provided for the service of a summons." Section 2035.040(b) requires service of the notice to be accompanied by a copy of the Petition. Section 2035.040(c) requires the service of a notice of the Petition to be made effected at least 20 days prior to the date specified in the notice for the hearing on the Petition.

The verified Petition states that Notice of the Petition was personally served on each of the entities named in the Petition as potential adverse parties at least 20 days prior to the date for hearing on the Petition, <u>but no proof of service is on file with the court</u>.

No opposition to the Petition has been filed with the court.

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 26, 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. 23CV1890 MURATORI ET AL v. TURNER ET AL

Motion Set Aside/Vacate Default

The Complaint was filed on October 31, 2023. Defendant Matthew Langford ("Defendant") received a copy of the Complaint at his home on November 8, 2023. Declaration of Matthew Langford, dated March 29, 2024 ("Langford Declaration") at ¶4. Defendant reviewed a proposed Answer and, on December 4, 2023, received a text message indicating an Answer had been filed with the court. Langford Declaration, ¶7, Exhibit A. On December 6, 2023, Defendant received another text indicating the filing had been rejected because he had not signed the document. Defendant executed a signature page and understood that it had been submitted to the court on December 8, 2023, according to a text confirmation he received. Langford Declaration, ¶11, Exhibit C.

Defendant states that he was travelling internationally between February 16 and February 24, 2024, and during that time his wife sent him an image of Plaintiff's Case Summary in Support of Application for Default Judgment, but there was no hearing date on the document, and he did not understand its significance. Langford Declaration, ¶13, Exhibit D. Upon his return he sought legal advice because he had not heard anything about the case since December. Langford Declaration, ¶14. Defendant retained counsel on March 4, 2024 and filed an Answer with the assistance of counsel on April 2, 2024. Langford Declaration, ¶15.

Defendant argues that this motion was filed well within the six-month statutory deadline, that he retained counsel and filed an answer diligently upon discovery of the default, and that Plaintiff will not be prejudiced because no discovery has commenced and there is no trial date set.

Plaintiffs oppose the motion because they argue that Defendant had notice on at least three occasions in time to avoid the default judgment. First, when the Statement of Damages was served on December 28, 2023, at his place of business; second, when the Request for Entry of Default was served on January 9, 2024, at his home address; and finally, when the Request for Entry of Default Judgment was served on February 14, 2024. Declaration of I. Hooshie Broomand, dated April 15, 2024.

Further, Plaintiffs argue that even though the motion was brought within six months of the default, Defendant's delay in bringing the motion three months after discovering the default was not "within a reasonable time" as required by Code of Civil Procedure § 473(b). Plaintiffs argue that is a lack of diligence to wait until March to retain counsel to respond to a Request for Entry of Default that was served in January. Defendant responds that Plaintiffs contributed to that delay through their own non-responsiveness to Defendant's counsel between the time that the was retained and the time the motion was filed nearly a month later, including failure to

respond to Defendant's request to stipulate to set aside the judgment. Declaration of Kevin Rooney, dated March 29, 2024 ("Rooney Declaration").

Plaintiffs argue that Defendant's reliance on another defendant to file an Answer was not reasonable.

Plaintiffs argue they will be prejudiced if the default is set aside because there is a judgment debtor exam already scheduled for May, 2024, and Plaintiffs have already incurred substantial legal expenses in costs and fees in the amount of $16,636.52. Defendant responds that expenditures incurred prior to the default and for a judgment debtor exam scheduled after Plaintiffs learned that Defendant had retained counsel and intended to set aside the default does not factor into an assessment of prejudice for set-aside of the default. Nevertheless, in order to avoid any potential prejudice as a result of the set-aside, Defendant offers to cover a portion of those costs proportional to the six of eleven causes of action directed at Langford in the Complaint.

Code of Civil Procedure § 473(b) provides:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.
>
> [B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite* v. *Southern Pacific Co*. (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

The confusion regarding whether or not an Answer had been filed and reliance on representations of other Defendants and apparently official filing confirmation messages generated by the court is sufficient to find "mistake, inadvertence, surprise, or excusable neglect" on the part of an unrepresented Defendant as to whether an Answer had been filed.

The test of timeliness in filing the motion to set aside "within a reasonable time" is measured from the time of discovery of the default, and is dependent on the facts and circumstances of each individual case. Stafford v. Mach, 64 Cal. App. 4th 1174, 1181 (1998).

Nowhere on the face of the Statement of Damages, served on December 28, 2023, is it stated that the document is served in anticipation of filing an application of default. Nor does the document refer to Code of Civil Procedure § 425.11, the statute that requires a Statement of Damages to be served before a default can be taken.

The Request for Default was served by mail to Langford's home address on January 9, 2024; this notice is not addressed in Defendant's Declaration; the Memorandum of Points and Authorities in support of the motion declares that Defendant did not become aware of the January 9, 2024, default until his counsel discovered it in the court's files.

The Request for Entry of Default Judgment, served by mail on February 14, 2024, and was received while Defendant was traveling abroad, and it was this document that caused Defendant to retain counsel upon his return on February 24, 2024.

The one-month period between the time that Defendant retained counsel and the actual filing of the motion is explained by counsel's attempts to communicate with opposing counsel, beginning with the day he was retained, and including two weeks during which time Plaintiffs' counsel was non-responsive to communications. Rooney Declaration, ¶¶9-11.

The ten-day period between the service (by mail) of the Request for Entry of Default Judgment and the efforts to retain counsel to respond to that filing is explained by Defendant's absence from the country at the time.

The roughly one-month period between the time of service of the January 9, 2024, Request for Default and Defendant's departure from the country without taking any action in response to that document is not explained.

TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 26, 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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5. 22CV0690 MALAKHOV v. MARTINEZ

Motion for Leave to File Amended Complaint

TENTATIVE RULING #5: PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT IS GRANTED, AS DISCUSSED IN THE TENTATIVE RULING #8.

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. 22CV1352 ADMAS ET AL v. LATROBE HILLS HOMEOWNERS ASSOC.

Motion for Trial Preference

This litigation involves property disputes and road maintenance issues with the HOA within which Plaintiffs residence is located. On March 31, 2024, Plaintiffs filed a motion for trial preference on the grounds that they are both over 80 years old and in poor health. Declaration of Lewis Adams, dated March 20, 2024.

Code of Civil Procedure § 36 provides:

> (a) 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.

Defendant opposes the motion because it argues that Plaintiffs are merely recovering from recent injuries and have shown no proof that their health is deteriorating or that they have shortened life expectancy.

Further, Defendant argues it would be prejudiced by the grant of the motion. Defendant plans to file a summary judgment motion has not yet been filed because of ongoing settlement negotiations that concluded at the end of March. Granting the motion would require filing that motion within 15 days of the court's Order. Defendant requires more time for discovery prior to filing that motion.

The court finds that the Plaintiffs both have a substantial interest in the action and that failing to grant the preference would prejudice that interest.

TENTATIVE RULING #6: PLAINTIFFS' MOTION FOR TRIAL PREFERENCE IS GRANTED. PARTIES ARE ORDERED TO APPEAR FOR TRIAL SETTING.

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. PC20200472 STEWART v. SHINGLE SPRINGS NISSAN-SUBARU

Motion for Approval of PAGA Settlement

Plaintiff Michael Stewart seeks approval of the Parties' settlement under the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698 et Seq. ("PAGA Settlement"). This is purely a PAGA action and the settlement reached by the Parties does not resolve any claims for wages owed nor release such claims, but only recovers penalties for aggrieved employees and the Labor Workforce Development Agency ("LWDA") pursuant to PAGA. Therefore, aggrieved employees may still pursue individual lawsuits to recover unpaid wages owed if they so choose.

California Labor Code § 2699(l)(2) states, "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Moreover, a proposed settlement shall be submitted to the Labor Workforce Development Agency ("LWDA") at the same time that the settlement of a PAGA claim is submitted to the court for approval. Id. Plaintiff has complied with this requirement and has submitted the proposed settlement to the LWDA. (Declaration of Michael A. Gould, dated March 5, 2024, ¶ 17.

The parties seek a court Order as follows:

1. The Court approves the settlement of penalties under the Private Attorneys General Act ("PAGA") in this matter in the total amount of Forty Thousand Dollars ($40,000.00). The Court finds the settlement of PAGA penalties in this matter to be fair, reasonable, to serve public interest, and to be consistent with PAGA's objectives.

2. The PAGA Settlement Fund will be calculated by deducting the settlement administration costs, all approved attorney's fees and costs, and approved PAGA service award to Plaintiff.

3. The P AGA Settlement Fund shall be allocated as follows: (a) 75% - will be paid to the Labor Workforce Development Agency ("LWDA"), and (b) 25% - shall be distributed to all Aggrieved Employees who worked during the period of September 23, 2019 through the date of entry of an order by the Court in this Action approving this Settlement.

4. Upon the Effective Date, Plaintiff, all PAGA Group Members, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged Shingle Springs Nissan-Subaru from any and all civil penalties which could be assessed upon and collected from Defendant under PAGA for known and unknown violations of California Labor Code sections 201-204, 210, 218.5, 226, 226.7, 510, 512, 1194, 1194.2, and 1197 and based upon the facts as alleged in the LWDA Notice and arising during the PAGA Period while employed in California. Collectively, as described herein, the claims to be released are the "Released Claims." This Settlement does not seek to release any other claims or remedies

available to PAGA Group Members with respect to any other violations of the Labor Code not specifically included herein.

5. The Court approves attorney's fees to The Gould Law Firm in the amount of Twelve Thousand Dollars ($12,000.00). The Court approves costs to The Gould Law Firm in the amount of ($1,994.57).

6. The Court approves a Service Award to Plaintiff Michael Stewart in the amount of Seven Thousand Five Hundred Dollars ($7,500.00).

7. The Court approves a payment to CPT Group, Inc. as the administrator in the amount of ($6,000.00).

8. Within twenty-one (21) calendar days after the Effective Date, Shingle Springs Nissan-Subaru, Inc. shall provide the Settlement Administrator with a list of the names, last known addresses, social security numbers, employment dates, and any other information necessary to calculate the number of semi-monthly pay periods for all aggrieved employees.

9. Within twenty-one (21) days after the Effective Date, Shingle Springs NissanSubaru, Inc. shall pay the gross Settlement Fund to the Claims Administrator.

10. Within thirty (30) days after the Effective Date, the Settlement Administrator shall (1) distribute the PAGA Amount in accordance with the Joint Stipulation For Settlement and Release of Private Attorneys General Act Representative Action, (2) the Court approved Attorney’s Fees and Costs; (3) then Court approved Service Award to Michael Stewart; and (4) the Court approved Administration costs.

11. Aggrieved Employees shall have one hundred and eighty (180) calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State Controller Unclaimed Property Fund.

12. The Court dismisses this action with prejudice.

13. The Parties shall serve the Labor Workforce Development Agency with this Order within ten (10) days after entry pursuant to California Labor Code § 2699 (1)(3).

14. The Parties shall comply with all obligations and provisions set forth in the Joint Stipulation For Settlement and Release of Private Attorneys General Act Representative Action signed in this action.

15. The Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-order matters as may be appropriate under court rules or as set forth in the Settlement of this matter.

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 26, 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.

8. 22CV0690 MALAKHOV v. MARTINEZ

Motion for Summary Judgment/Summary Adjudication
Motion for Leave to File First Amended Complaint

This is an action that arises from a contract for new home construction on real property purchased by Plaintiffs. Plaintiffs contracted with the seller, 5059 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 principals of 5059 Greyson Creek, LLC, and Ninoroy Machado as the agent of the real estate brokerage that represented the seller, All City Homes dba Side, Inc. Ninoroy Machado is the individual salesperson who was retained through All City Homes/Side, Inc. by the sellers to represent them in the sale of the real property to Plaintiffs.

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. When the Plaintiffs first filed the motion this was the entire description of the proposed amendment; the court continued the motion to give Plaintiffs an opportunity to provide a more specific description of the proposed amendment as required by the California Rules of Court.

Among the changes Plaintiff proposes to the FAC that were not mentioned in the original motion were the addition of an additional Defendant and the removal of a cause of action for "attempted civil extortion". Other changes included the addition of two new causes of action that duplicate existing causes of action for negligence and violation of Business and Professions Code § 17200 et seq. but split those allegations between Defendants according to distinctions in the conduct of the Defendants and their relationship to the contract at issue. So, for example, the Seventh Cause of Action for negligence ("Negligence I") pertains to Machado and Side, Inc, while the Eighth Cause of Action for negligence ("Negligence II") pertains to Defendants 5059 Greyson Creek Drive, Martinez, Morrow, ATA, Altamira and Martin. This splitting of existing causes of action is an apparent response to Machado's motion for summary judgment, discussed below.

The original Complaint did not specify particular Defendants to which each Cause of Action was directed. The proposed FAC specifies that the following causes of action specifically include Machado and/or Side, Inc.: Third Cause of Action (Breach of Good Faith and Fair Dealing-alleged liability based on Machado acting as the seller's broker for the real property transaction

"and as such, was seller's agent"); Fifth Cause of Action (Negligent Infliction of Emotional Distress); Sixth Cause of Action (Intentional Infliction of Emotional Distress); Seventh Cause of Action (Negligence I); Ninth Cause of Action (Fraud); and Eleventh Cause of Action (Business & Professions Code § 17200 et seq).

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

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

"The trial court has discretion to allow amendments to the pleadings 'in the furtherance of justice.' (Code Civ. Proc., § 473.) This discretion should be exercised liberally in favor of amendments, for judicial policy favors resolution of all disputed matters in the same lawsuit." Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047.

> [I]t is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)

Board of Trustees of Leland Stanford Jr. University v. Superior Court (2007) 149 Cal.App.4th 1154, 1163.

Machado opposes the motion to file a FAC as being prejudicial and untimely.

According to Machado, meet and confer efforts over deficiencies in the Complaint began in August, 2022, and at that time Plaintiffs agreed to amend the Complaint. Declaration of Jeffrey TA, dated February 23, 2024, ("Ta Declaration") at ¶ 4. In December, 2022, Plaintiff sent Machado a draft FAC. Ta Declaration at ¶5. Despite repeated inquiries from Defendants, Plaintiff didn't file the FAC. Ta Declaration at ¶XX. In March, 2023 Plaintiff repeatedly represented that the amended Complaint had been filed. Ta Declaration at ¶9-10, Exhibits I, J. In May, 2023, Plaintiffs represented that the intended to amend the Complaint to add Defendant Tyrone Levar Martin. Ta Declaration at ¶11, Exhibit K. In June 2023, Machado's counsel communicated to all counsel, including Plaintiff's counsel, that no amended Complaint had been filed. Ta Declaration at ¶ 15, Exhibit K. It was not until after Machado filed a summary judgment motion that Plaintiff finally filed a motion to amend the Complaint. Ta Declaration at ¶18, Exhibit M. At the hearing on December 22, 2023, that motion was continued to January 26, 2024, to allow Plaintiff to

serve notice of the motion on all parties. The court also rejected the motion because it did not contain a description of the proposed amendments that complied with legal requirements. At Plaintiff's request, the motion was again continued to February 23, 2024, and at that hearing it was again continued because a copy of the corrected motion did not appear in the court's files. The matter was scheduled to be heard in April, 2024, concurrently with Machado's motion for summary judgment.

Plaintiff never filed an opposition to Machado's motion for summary judgment, but instead has addressed the issues raised in that motion through its amendments to the FAC.

The court finds that Machado has been prejudiced by Plaintiff's substantial delay in filing the FAC, notwithstanding Plaintiff's false representations to the other parties that they had in fact filed the FAC as early as March, 2023. These false representations caused Machado to file a summary judgment motion that amounted to a wasted effort because the arguments raised in that motion have been somewhat mooted by the amendments in the FAC. Plaintiffs did not file an opposition, but instead used the FAC to avoid responding to the motion. Given the court's discretion to grant the motion for leave to file the FAC "on any terms as may be proper" the court finds that the Plaintiffs' extensive delay in filing the FAC and its false representations to the other parties justifies an award of attorney's fees and costs incurred by Machado in filing the summary judgment motion, subject to proof.

Motion for Summary Judgment/Summary Adjudication

Machado's motion for summary judgment argues that he cannot be held responsible for Plaintiff's damages for any consequences arising from the performance or non-performance of the construction contract because represents that he never spoke directly to Plaintiffs, never made any verbal promises to Plaintiffs, and never made any representations to Plaintiffs about the construction contract entered into by Plaintiffs and 5059 Greyson Street, LLC. Declaration of Ninoroy Machado, ¶¶3-5. Neither Machado nor Side Inc., dba All City Homes are parties to the construction contract. UMF No. 4.

Under the Proposed First Amended Complaint ("FAC") Machado and/or Side, Inc. are named in the following cause of action: Third Cause of Action (Breach of Good Faith and Fair Dealing-alleged liability based on Machado acting as the seller's broker for the real property transaction "and as such, was seller's agent"); Fifth Cause of Action (Negligent Infliction of Emotional Distress); Sixth Cause of Action (Intentional Infliction of Emotional Distress); Seventh Cause of Action (Negligence); Ninth Cause of Action (Fraud); and Eleventh Cause of Action (Business & Professions Code § 17200 et seq).

Given that the Plaintiffs have shifted the landscape by filing the FAC with new allegations and causes of action directed at Machado, it does not make sense to address the arguments framed in October 2023 with respect to a substantially revised FAC.

TENTATIVE RULING #8:

(1) DEFENDANT MACHADO IS AWARDED ATTORNEY'S FEES AND COSTS INCURRED IN BRINGING THE OCTOBER 13, 2023, MOTION FOR SUMMARY JUDGMENT IN AN AMOUNT SUBJECT TO PROOF. DEFENDANT SHALL FILE AND SERVE A DECLARATION BY MAY 10, 2024 REGARDING FEES INCURRED FOR THE MOTION. PLAINTIFF MAY FILE AND SERVE A RESPONSE BY MAY 24, 2024, AFTER WHICH THE COURT WILL ISSUE A RULING VIA EX PARTE MINUTE ORDER.

(2) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED WITHOUT PREJUDICE. DEFENDANT MAY REFILE THE MOTION FOR SUMMARY JUDGMENT IF IT APPEARS APPROPRIATE UPON REVIEW OF THE AMENDED COMPLAINT.

(3) PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT IS GRANTED, SUBJECT TO THE REQUIREMENT THAT PLAINTIFFS PAY FEES AND COSTS INCURRED BY DEFENDANT MACHADO IN BRINGING THE OCTOBER 13, 2023, SUMMARY JUDGMENT MOTION.

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

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

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

9. 22CV0507 RIVERA ET AL v. BENSON

Motion for Summary Judgment /Summary Adjudication

The parties entered into three financial transactions, regarding which the Complaint alleges breach of contract and fraud, in addition to a common counts cause of action. The amount alleged to be owed between all three loans is $449,000, or $674,000 with interest and penalties.

A December 19, 2019 loan transaction ("First Note") was for the amount of $200,000 evidenced by a Promissory Note; a second transaction on February 10, 2020 ("Second Note") was for $199,000. (Complaint, Exhibit A). The borrowers in these two instruments were Defendants Benson and Dobbins, and Coastal PVA Technologies, Inc., a California corporation.

The First Note provided for "Guaranteed Interest" in the amount of $100,000 and a repayment date that was six months from the date of the loan. The Second Note also provided for "Guaranteed Interest" in the amount of $100,000, with a repayment date that was three months from the date of the loan. Both instruments provided that failure to repay the Note by the payment due date would require the Defendants/ borrowers to transfer 100 percent of their membership interest in Coastal PVA to the Plaintiffs/lenders. Plaintiffs allege that at the time the loans were made the Defendants fraudulently represented that they had the ability to repay the loans.

A third transaction on July 31, 2020 ("Profit Participation Agreement") was made after both the First and Second Notes had matured. included a payment by Plaintiffs to Defendants of $50,000. The Profit Participation Agreement provided the Defendant Benson would pay Plaintiffs 12.5 percent of the profits of Virushield, Inc., of which Benson owned 40 percent of corporate shares, in exchange for waiving the Guaranteed Interest amounts ($200,000) owed under the First and Second Notes. The principal amounts of the First and Second Notes ($399,000) remained due, and the due date for payment was extended to December 31, 2020. If the principal was not paid by December 31, 2020, then Defendant Benson would owe the full amount of the First and Second Notes, including the Guaranteed Interest amounts, the $50,000 of "additional consideration" for the Profit Participation Agreement, as well as an additional penalty of $25,000. The total amount due under the Profit Participation Agreement, if the $399,000 was not paid by December 31, 2020, was $674,000. This included the $50,000 "consideration" payment, such that, the repayment of that amount cannot be characterized as a loan or interest on a loan. Rather, the $50,000 might be best characterized as liquidated damages or a penalty, although the obligation to repay that amount is not assigned any characterization in the Profit Participation Agreement.

Inexplicably, the Profit Participation Agreement contained no provision for the payment of profits from the corporation, and does not address the requirement of the earlier Notes that Defendants were already required to transfer 100 percent ownership to Plaintiffs when they missed the payment deadline. This transfer of interest never occurred. UMF No. 38.

Standard of Review – Summary Adjudication

As discussed below, there are several triable issues of material fact, and so the motion for summary judgment is denied. The court will evaluate whether summary adjudication would be supported as to each cause of action in the Complaint.

The statute governing summary adjudication allows a party to challenge a pleading "as to one or more causes of action within an action, . . . if the party contends that the cause of action has no merit, . . . A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code of Civil Procedure § 437c(f)(1).

"A cause of action has no merit if [o]ne or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded." Code of Civil Procedure § 437c(o). 05-12-23 Dept. 9 Tentative Rulings 13 Similar to summary judgment, the moving party's burden on summary adjudication is to establish evidentiary facts sufficient to prove or disprove the elements of a claim or defense. ([California Code of Civil Procedure] § 437c, subds.(c), (f).)

Oakland Raiders v. Nat'l Football League, 131 Cal. App. 4th 621, 629 (2005).

First Cause of Action – Breach of Contract

"Establishing that claim requires a showing of "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." D'Arrigo Bros. of California v. United Farmworkers of Am., 224 Cal. App. 4th 790, 800 (2014).

Consideration

Defendants argue that the Profit Participation Agreement in unenforceable because it lacked consideration. The recited consideration was the waiver of illegal interest payments under the First and Second Notes. However, the Profit Participation Agreement also required Plaintiffs to make a $50,000 payment that is characterized as consideration for the agreement, and in return for Plaintiffs' consideration Defendant offered a share of corporate profits in

Virushield, Inc. These various exchanges of value are sufficient consideration to support a contract.

Waiver

Defendants also argue that there has been no breach of the First and Second Notes because the Profit Participation Agreement waived the maturity dates of the First and Second Notes, and because Plaintiffs never made a written demand, there is no maturity date for repayment. However, both the First and Second Notes contain a statement that the failure of Plaintiffs to exercise any right or remedy, before or after a default, shall constitute a waiver of such right as to any default. First Note, ¶5; Second Note ¶5. Neither instrument contains a provision specifying that payment is not due until the lenders make a demand for payment. Neither does the Profit Participation Agreement contain any provision requiring Plaintiffs to make a written demand for payment to trigger a payment obligation. The due dates for payment are very clearly stated in all of the three instruments with no prerequisite for a written demand for payment.

In a related argument, Defendants claim that, because only Defendant Benson was a party to the Profit Participation Agreement and that that Agreement waived the due date for payment under the First and Second Notes, Plaintiffs have no claim for breach as to Defendants Dobbins and Coastal PVA Technologies, Inc.

Paragraph 4 of the Profit Participation Agreement declares that, upon its execution, "any . . . interest or fees due or enforceable pursuant to the First Promissory Note or Second Promissory Note are consider [sic] by the Parties to be paid in full, void or otherwise fully satisfied." Complaint, Exhibit A. However, that effect is undone in Paragraph 6 ("Event of Non-Payment") where, if the principal amount due under those Notes is not paid in full by December 31, 2020, "[t]he First Promissory Note and Second Promissory Note are due in full, . . . totalling [$674,000]." Accordingly, any effect of the waiver of claims to interest payments contained in Paragraph 4 is undone in Paragraph 6 if the anticipated principal payment is not made by the due date.

Breach of Contract v. Common Counts

Defendants argue that Plaintiffs may not maintain an action for breach of contract as well as an action for quantum meruit (common counts), citing Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism, 6 Cal. App. 5th 1207, 1223 (2018). However, that case provides that in fact Plaintiffs can plead breach of contract as well as common counts as alternative theories, but cannot recover under both. Id.

Damages

Defendants claim that the uncertain amount of Plaintiffs' damages creates a triable issue of material fact in light of Defendants' claim for a set off pursuant to Code of Civil Procedure § 431.70 in the Answer. However, a claim to a set off does not create a triable issue of material fact precluding the grant of summary judgment where the fact of damages is not disputable, and it only remains to determine the amount of damages subject to a right of set off. Los Angeles Unified Sch. Dist. v. Torres Constr. Corp., 57 Cal. App. 5th 480, 499 (2020).

Defendants' principal argument in defending against this motion is that the First and Second Notes are invalid and unenforceable because the interest rates charged are in violation of Cal. Const. art. XV, § 1.[1] Defendants argue that the amount of damages is a triable issue of material fact, because usurious interest amounts may not be legally charged. Plaintiff's claim for damages, including interest and penalties under the three instruments, is $674,000, which represents $275,000 in interest and penalties above the $399,000 principal amount.

> [T]he usury law includes: (1) rate-setting provisions that set forth presumptive and maximum interest rates (Cal. Const., art. XV, § 1; Civ.Code, § 1916–1); (2) prohibition provisions that forbid the receipt of interest above the maximum rate (Cal. Const., art. XV, § 1; Civ.Code, § 1916–2); and (3) remedial provisions that provide civil and criminal penalties for a violation (Civ.Code, § 1916–3)

Bisno v. Kahn, 225 Cal. App. 4th 1087, 1100 (2014).

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[1] Section 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand, shall be 7 percent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest:

(1) For any loan or forbearance of any money, goods, or things in action, if the money, goods, or things in action are for use primarily for personal, family, or household purposes, at a rate not exceeding 10 percent per annum; provided, however, that any loan or forbearance of any money, goods or things in action the proceeds of which are used primarily for the purchase, construction or improvement of real property shall not be deemed to be a use primarily for personal, family or household purposes; or
(2) For any loan or forbearance of any money, goods, or things in action for any use other than specified in paragraph (1), at a rate not exceeding the higher of (a) 10 percent per annum or (b) 5 percent per annum plus the rate prevailing on the 25th day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended . . . .
No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than the interest authorized by this section upon any loan or forbearance of any money, goods or things in action.

* * *

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.

Cal. Const. art. XV, § 1

The court agrees with Plaintiff, in accordance with the citations of authority in its Reply brief, that a usurious interest rate does not void the debt instrument. Soleimany v. Narimanzadeh, 78 Cal. App. 5th 915 (2022); Grados v. Shiau, 63 Cal. App. 5th 1042 (2021); Epstein v. Frank, 125 Cal. App. 3d 111 (1981).

However, the court agrees with Defendant that the amount of interest that can be legally charged and the resulting amount of Plaintiff's total damages are a triable issue of material fact. "[T]here is no legal basis for a plaintiff's motion for summary adjudication on liability only." Paramount Petroleum Corp. v. Superior Ct., 227 Cal. App. 4th 226, 244 (2014). "As damages are an element of a breach of contract cause of action (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 229, 166 Cal.Rptr.3d 864), a plaintiff cannot obtain judgment on a breach of contract cause of action in an amount of damages to be determined later." Id., 227 Cal. App. 4th at 241.

> [T]he governing statute provides that a plaintiff can only obtain summary adjudication of a cause of action if the plaintiff establishes each element of the cause of action entitling it to judgment on that cause of action. The court specifically held that "[a] decision on the issue of liability against the party on whom liability is sought to be imposed does not result in a judgment until the issue of damages is resolved." (*Department of Industrial Relations v. UI Video Stores, Inc., supra,* 55 Cal.App.4th at p. 1097, 64 Cal.Rptr.2d 457.)

Id, 227 Cal. App. 4th at 243.

Second Cause of Action – Common Counts

> The essential allegations of a common count 'are (1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.' (2 Witkin, Cal.Procedure, Pleading s 266, p. 1242.)

Allen v. Powell, 248 Cal. App. 2d 502, 510 (1967).

In this case, the "certain sum" of the amount of indebtedness is a triable issue of material fact given the dispute regarding legally enforceable interest rates for the Notes. Defendants allege that $275,000 in interest and penalties above the $399,000 principal amount amounts to unenforceable usurious interest charges. Further, Defendants' Answer asserts a right to set off Plaintiff's damages pursuant to Code of Civil Procedure § 431.70.

Third Cause of Action – Fraud/ Fourth Cause of Action – False Promise

The elements of fraud are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. Witkin, Summary 11th Torts § 890 (2023).

A promise to do something necessarily implies the intention to perform, and where that intention is absent, there is an implied misrepresentation of fact, which is actionable fraud. Id. § 899.

Plaintiffs allege that at the time the loans were made the Defendants fraudulently represented that they had the ability to repay the loans. There are triable issues of fact inherent in this claim. Most prominently, there is a factual issue as to knowledge of falsity and intent to defraud. Defendants argue that they had an expectation of selling the corporation and that the sale would provide the funds for to repay the indebtedness. Deposition of Briant Benson, Evers Declaration Exhibit 4, pp.38:23-39:25. Notably, all of these transactions were based on expectations of growing corporate profits in order to attract a buyer not knowing how the timing and effects of the COVID epidemic would affect those plans. Id. at pp. 56:18-23; 60:19-24.

The court finds that knowledge of falsity and intent to defraud are triable issues of material fact related to the Third and Fourth Causes of Action.

TENTATIVE RULING #8:

(1) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IS DENIED.
(2) PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION 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).

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10. PC20200061 BARNUM v. ROUNDAY PROPERTIES ET AL

Order of Examination Hearing

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 26, 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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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. 23CV0515 CLAIM OF BRANDYN HERRERA

Claim Opposing Forfeiture

Claimant filed a Claim Opposing Forfeiture regarding $2,981 on April 11, 2023.

On May 22, 2023, the People of the State of California filed a Petition for Forfeiture pursuant to Health and Safety Code § 11469, et seq. regarding $2,981 that was seized from Claimant's person on February 2, 2023, and is currently in the possession of the El Dorado County District Attorney's Office.

At the hearing on May 26, 2023, the court found that no proof of service had been filed and there had been no meet and confer efforts and continued the hearing.

At the hearings of July 14, 2023, January 12, 2024, and March 22, 2024, the matter was continued at the request of counsel for the State of California.

Notice of this hearing was waived at the last hearing on March 22, 2024.

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 26, 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. 24CV0416 NAME CHANGE OF PAIXAO

Petition for Name Change

Petitioner filed a Petition for Change of Name on March 5, 2024.

Proof of publication was filed on March 29, 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 #12: 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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