**1. MAISEL v. BUSSELL, ET AL., 23CV1464**

**(A) Defendant Ryan Bussell's Motion to Strike Portions of First-Amended Complaint**

**(B) Defendant Ryan Bussell's Demurrer to First-Amended Complaint**

**(C) Plaintiff's Motion to Compel Further Responses**

**Defendant Ryan Bussell's Motion to Strike Portions of First-Amended Complaint**

**1. Background**

On March 5, 2024, the court sustained defendant Ryan Bussell's demurrer to the First, Second, and Third causes of action within plaintiff's Complaint with leave to amend. Notice of the court's ruling was served upon the parties by mail on March 6, 2024. Pursuant to California Rules of Court, Rule 3.1320, subdivision (g), and Code of Civil Procedure section 1013, subdivision (a), plaintiff's deadline to file an amended complaint was March 25, 2024.[1] Defendant granted a one-time extension to March 29, 2024.

Plaintiff did not file the First Amended Complaint ("FAC") until April 23, 2024. Plaintiff's counsel has submitted a declaration stating that on March 28, 2024, she became severely ill, ultimately being diagnosed with pneumonia and a severe sinus infection, while also tending to her four-year-old daughter, who had also fallen ill necessitating multiple trips to urgent care. (Shofner Decl., ¶ 5.)

The proof of service shows that plaintiff's FAC was served upon defendant electronically on April 23, 2024. As such, defendant's responsive pleading was due on or before May 28, 2024. (See Code Civ. Proc., §§ 412.20, subd. (a)(3), 1013, subd. (e).) On May 28, 2024, defendant submitted a declaration in support of an automatic 30-day

[1] California Rules of Court, Rule 3.1320, subdivision (g) provides, in relevant part, "[f]ollowing a ruling on a demurrer, unless otherwise ordered, leave to answer or amend within 10 days is deemed granted." Ordinarily, the deadline to file an amended complaint would have been March 18, 2024 (the tenth day, March 16, fell on a Saturday). However, pursuant to Code of Civil Procedure section 1013, subdivision (a), the deadline is extended five days because the ruling was served by mail. The fifth day, March 23, fell on another Saturday. Thus, the deadline to file an amended complaint was March 25, 2024.

extension pursuant to Code of Civil Procedure section 430.41, subdivision (a)(2).[2] This extended the deadline for defendant's responsive pleading to June 27, 2024.

Also on May 28, 2024, defendant filed a motion to dismiss the First, Second, and Third causes of action in the FAC pursuant to Code of Civil Procedure section 581, subdivision (f)(2). At the hearing on June 28, 2024, the court denied defendant's motion to dismiss and ordered defendant to file a responsive pleading within 10 days of the hearing date (July 8, 2024).

**2. Preliminary Matter**

Plaintiff argues that defendant's motion to strike is untimely where defendant failed to file the motion together with his motion to dismiss filed May 28, 2024. Defendant does not address the issue of timeliness in his reply.

California Rules of Court, Rule 3.1322, subdivision (b), provides: "A notice of motion to strike must be given within the time allowed to plead, and if a demurrer is interposed, concurrently therewith, and must be noticed for hearing and heard at the same time as the demurrer." (Cal. Rules Ct., R. 3.1322, subd. (b).)

Both parties contend that defendant's motion to dismiss actually constituted a demurrer. (See Shofner Decl., ¶ 24 & Ex. 8, citing *Citizens for Parental Rights v. San Mateo County Bd. of Education* (1975) 51 Cal.App.3d 1, 38 (Rouse, J., dissenting) ["The motion to dismiss is, as we have noted, the legal equivalent of a general demurrer."].)

[2] Code of Civil Procedure section 430.41, subdivision (a)(2) provides in relevant part: "The parties shall meet and confer at least 5 days before the date the responsive pleading is due. If the parties are not able to meet and confer at least 5 days before the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer." (Code Civ. Proc., § 430.41, subd. (a)(2).)

However, the court notes that during the June 28, 2024, hearing on defendant's motion to dismiss, the court granted defendant 10 days leave to file a responsive pleading. Therefore, the court deems the instant motion to strike timely and will consider the merits of the motion.

**3. Discussion**

3.1 Motion to Strike First, Second, and Third Causes of Action

Defendant moves to strike the First, Second, and Third causes of action in the FAC on the grounds that plaintiff failed to timely file an amended complaint within 10 days of notice of the court's order sustaining defendant's demurrer to those causes of action. Plaintiff's amended pleading was due on or before March 25, 2024. Plaintiff did not file the FAC until April 23, 2024.

"If an amended complaint is filed after the time to file an amended complaint has expired, then the court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant against that plaintiff or a plaintiff." (Code Civ. Proc., § 438, subd. (h)(4)(A).)

A determination to strike a pleading under section 436 is reviewed for abuse of discretion. (*Leader v. Health Industries of America*, *Inc.* (2001) 89 Cal.App.4th 603, 612 (*Leader*).) "An order striking all or part of a pleading under Code of Civil Procedure section 435 et seq. is reviewed for abuse of discretion. [Citation.] This means that the reviewing court will disturb the ruling only upon a showing of a ' " 'clear case of abuse' " ' and a ' " 'miscarriage of justice.' " ' [Citations.] Discretion is abused only when, in its exercise, the trial court ' "exceed[ed] the bounds of reason, all of the circumstances before it being considered." ' [Citation.]" (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282 (*Quiroz*).)

The court declines to strike the First, Second, or Third Causes of Action. The court finds that plaintiff's counsel has provided a reasonable explanation for the delay and that such delay in filing the FAC was brief and inconsequential. (See *Harlan v. Dept. of*

*Transportation* (2005) 132 Cal.App.4th 868, 872–873.) Under the circumstances, the court exercises its discretion to accept the FAC without a noticed motion for leave to file the untimely amendment. (*Id.*, at p. 873.) The motion to strike is denied.

3.2 Motion to Strike Other Portions of FAC

Defendant moves to strike Paragraphs 20 and 22, as well as portions of Paragraphs 23, 31, 38, 39, 42, 49, 50, and 53. Each of the challenged portions include allegations regarding plaintiff's friends and family. Defendant argues that plaintiff lacks standing to make these allegations on behalf of third parties not part of this action. (Mtn. at 7:19–21.) Plaintiff states she is not making a claim on behalf of the third parties. Rather, the "[r]eference[s] to Plaintiff's friends or family are made to evidence that the subject agreement between Plaintiff and Defendant was known to such friends or family as evidenced by their reliance on same." (Opp. at 8:25–27.)

Under Code of Civil Procedure section 436, subdivision (a), the court may strike out "any irrelevant, false, or improper matter inserted in the pleading." (Code Civ. Proc., § 436, subd. (a).) The face of the FAC does not clearly demonstrate that the paragraphs objected to are irrelevant, false, or improper. The motion to strike is denied.

**Defendant Ryan Bussell's Demurrer to First-Amended Complaint**

**1. Preliminary Matter**

Defendant claims that plaintiff's opposition brief was filed four minutes after the statutory deadline and should therefore not be considered. The court has discretion to refuse to consider papers served and filed beyond the deadline without a prior court order finding good cause for late submission. (*Bozzi v. Nordstrom*, *Inc.* (2010) 186 Cal.App.4th 755, 765.) However, the court declines to exercise that discretion here. The delay was minimal and there is no showing of prejudice to defendant, who substantively responded to the opposition and did not request a continuance to prepare a reply.

**2. Discussion**

2.1 First C/A for Breach of Contract

Plaintiff's First cause of action in the FAC alleges breach of contract pursuant to *Marvin v. Marvin* (1976) 18 Cal.3d 660. In *Marvin*, the California Supreme Court found that nonmarital partners may enter into an enforceable agreement to share property. The court stated: "[W]e base our opinion on the principle that adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights." (*Id.* at p. 674.) Nonmarital partners "may agree to pool their earnings and to hold all property acquired during the relationship in accord with the law governing community property; conversely they may agree that each partner's earnings and the property acquired from those earnings remains the separate property of the earning partner." (*Ibid.*)

A *Marvin* agreement to share assets may be express. Absent an express agreement, "[t]he courts may inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract … or some other tacit understanding between the parties." (*Marvin*, *supra*, 18 Cal.3d at p. 684; see also *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 455 ["[A]n implied-in-fact contract entails an actual contract, but one manifested in conduct rather than expressed in words"].) A number of factors, including pooling of finances to purchase property, joint decisions on purchasing property and the nature of the title taken on property can support a finding an implied agreement to share the property acquisition or acquisitions equally. (*Maglica*, at p. 456.)

Here, plaintiff alleges an express agreement between the parties. Plaintiff and defendant allegedly agreed that defendant would remit the mortgage payments for their initial home purchase and plaintiff would pay other living expenses (i.e., utilities, food, entertainment, furniture, and travel). (FAC, ¶ 13.) Plaintiff and defendant further agreed that after purchasing their second home, they would formally place one another on title to both properties. (FAC, ¶ 14.)

Defendant argues that the First cause of action is barred by the statute of frauds. (See Civ. Code § 1624, subd. (a)(3) [an agreement for the sale of real property, or of an interest therein if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged].) The court notes that in its ruling on defendant's previous demurrer, the court found that the statute of frauds barred the First cause of action. However, upon further consideration, the court finds that the statute of frauds actually does not apply. The alleged property agreement was not for the sale or lease of real property, but instead for the distribution of real property upon dissolution of the nonmarital relationship.

The court finds that plaintiff has alleged sufficient facts to state a claim for breach of contract under *Marvin*. The demurrer to the First cause of action is overruled.

2.2 Second C/A for Fraud

Defendant argues that the Second cause of action for fraud is not sufficiently pleaded where plaintiff alleges only "on information and belief" the essential elements of a fraud claim. A plaintiff cannot allege fraud on information and belief without also alleging the facts on which that belief is founded. (*Dowling v. Spring Valley Water Co.* (1917) 174 Cal.218, 221 ["[I]t is not sufficient to allege fraud or its elements upon information and belief, unless the facts upon which the belief is founded are stated in the pleading."].)

Here, the court finds that plaintiff has alleged the facts on which her beliefs are founded. For example, in Paragraph 37 of the FAC, plaintiff alleges, on information and belief, defendant knowingly and falsely represented to plaintiff that he would hold the subject property in his name but that the property would be their joint property. (FAC, ¶ 37.) "Plaintiff bases such information and belief on the fact that [defendant] crossed out the name of the owner on the Site Plan submitted to the TRPA on June 8, 2017…" (*Ibid.*)

Based on the above, the court overrules the demurrer to the Second cause of action for fraud.

2.3 Third C/A for Fraudulent Inducement

Similar to the Second cause of action, defendant argues that the Third cause of action for fraudulent inducement is not sufficiently pleaded where plaintiff alleges only "on information and belief" the essential elements of a fraudulent inducement claim. However, the Third cause of action realleges and incorporates by reference the allegations set forth in the previous paragraphs. The court finds that the previous paragraphs include the basis for plaintiff's allegations that are made upon information and belief.

The court overrules the demurrer to the Third cause of action for fraudulent inducement.

2.4 Fourth C/A for Restitution

Defendant argues that restitution is a remedy not a cause of action. The court agrees. "[R]estitution is a remedy and not a freestanding cause of action." (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 362.) Therefore, the demurrer to the Fourth cause of action for restitution is sustained without leave to amend.

**Plaintiff's Motion to Compel Further Responses**

Upon the court's own motion, the matter is continued to October 11, 2024. Given that defendant submitted supplemental responses to the discovery requests following the filing of plaintiff's motion to compel, the parties are required to submit updated briefing to the court regarding the adequacy of defendant's supplemental responses. Plaintiff's supplemental brief must be submitted on or before September 30, 2024, and defendant's supplemental brief must be submitted on or before October 4, 2024.

**TENTATIVE RULING # 1: THE MOTION TO STRIKE IS DENIED. THE DEMURRER IS OVERRULED AS TO THE FIRST, SECOND, AND THIRD CAUSES OF ACTION WITHIN THE FIRST AMENDED COMPLAINT. THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND AS TO THE FOURTH CAUSE OF ACTION WITHIN THE FIRST AMENDED**

**COMPLAINT. THE MOTION TO COMPEL IS CONTINUED TO 1:30 P.M., FRIDAY, OCTOBER 11, 2024, IN DEPARTMENT FOUR. GIVEN THAT DEFENDANT SUBMITTED SUPPLEMENTAL RESPONSES TO THE DISCOVERY REQUESTS FOLLOWING THE FILING OF PLAINTIFF'S MOTION TO COMPEL, THE PARTIES ARE REQUIRED TO SUBMIT UPDATED BRIEFING TO THE COURT REGARDING THE ADEQUACY OF DEFENDANT'S SUPPLEMENTAL RESPONSES. PLAINTIFF'S SUPPLEMENTAL BRIEF MUST BE SUBMITTED ON OR BEFORE SEPTEMBER 30, 2024, AND DEFENDANT'S SUPPLEMENTAL BRIEF MUST BE SUBMITTED ON OR BEFORE OCTOBER 4, 2024.**

**NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**2. CAPITAL ONE, N.A. v. LORENTZ, 24CV1286**

**Motion to Quash**

Before the court is defendant's motion to quash service of summons pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1) on the ground that the court lacks personal jurisdiction over defendant (both general and specific). Plaintiff filed an opposition. Defendant did not file a reply.

If a defendant properly files a motion to quash service of summons for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence the prima facie facts entitling the court to assume jurisdiction. (*Viaview, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209–210.) A judge has jurisdiction to make an initial determination about the court's alleged lack of personal jurisdiction where, as here, it is challenged by a "specially appearing" defendant. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1228.)

Defendant claims he is a resident of Nevada and does not conduct regular business activities in California. Plaintiff claims that defendant was properly served in California at the address he uses on the instant motion (1034 Emerald Bay Road, No. 1126, South Lake Tahoe, California). However, the court notes that defendant was served by substitute service. Although substitute service may be effective for other purposes, only personal service of process supports personal jurisdiction over nonresidents temporarily present in the state. (See *Burnham v. Superior Court* (1990) 495 U.S. 604, 611.) Therefore, plaintiff cannot rely on its service upon defendant as demonstrating the court has personal jurisdiction over defendant.

Nonetheless, plaintiff claims that in early 2023, defendant allegedly notified his creditor of his new address in South Lake Tahoe, California. Coupled together with the fact that defendant uses the same California address on the instant motion, the court finds that plaintiff has demonstrated defendant is domiciled within the forum state and

subject to the personal jurisdiction of local courts. (*Milliken v. Meyer* (1940) 311 U.S. 457, 462.)

The motion to quash is denied.

**TENTATIVE RULING # 2: THE MOTION TO QUASH IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**3. CURTIS JOHNSON, ET AL. v. KENT JOHNSON, SC20180141**

**Referee's Motion for Contempt**

The court-appointed referee moves this court for an order: (1) sanctioning defendant Kent Johnson; (2) ordering final distribution of the $50,000 of sale proceeds remaining in the referee's attorney trust account; (3) discharging the referee; and (4) taking the January 10, 2025, review hearing in this matter off calendar.

**TENTATIVE RULING # 3: AS TO FURTHER SANCTIONING DEFENDANT, THE MOTION IS DENIED. AS TO FINAL DISTRIBUTION, THE MOTION IS GRANTED AS REQUESTED WITH THE REFEREE'S FEES REDUCED AS AGREED TO IN HIS REPLY BRIEF. THE REFEREE'S REQUEST TO BE DISCHARGED IS GRANTED. THE JANUARY 10, 2025, REVIEW HEARING IS HEREBY VACATED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**4. SEDANO, ET AL. v. MAND, 23CV0691**

**Motion for Leave to File Fifth-Amended Complaint**

Before the court is plaintiff Tatiana Ramirez's unopposed motion for leave to file the proposed Fifth-Amended Complaint pursuant to Code of Civil Procedure section 576. The proposed Fifth-Amended Complaint adds a new plaintiff, Andrei Stoica, and adds language concerning his steps to comply with the administrative exhaustion procedure required to assert a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of the State of California and the workforce.

A trial court may allow the amendment of a pleading at any time up to and including trial. (Code Civ. Proc., §§ 473, subd. (a)(1), 576.) "It is well established that leave to amend a complaint is entrusted to the sound discretion of the trial court, and that the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse of discretion." (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 909.)

Defendant did not file an opposition to the instant motion. "If opposition papers are not timely filed, the court in its discretion may deem it a waiver of any objections and treat it as an admission that the motion or other application is meritorious. The court, in its discretion, may grant the motion." (See Local Rules of the El Dorado County Superior Court, rule 7.10.02, subd. (C).)

The motion is granted.

**TENTATIVE RULING # 4: THE MOTION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**5. JP MORGAN CHASE BANK N.A. v. LORENTZ, 24CV0393**

**Motion to Quash**

Before the court is defendant's motion to quash service of summons pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1) on the ground that the court lacks personal jurisdiction over defendant (both general and specific). Plaintiff filed an opposition. Defendant did not file a reply.

Personal jurisdiction may be asserted over nonresident defendants who make a general appearance in the action: "A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a); see *Fireman's Fund Ins. Co. v. Sparks Const., Inc.* (2004) 114 Cal.App.4th 1135, 1145.) Here, defendant filed an answer to plaintiff's complaint as well as a cross-complaint. His general appearance is participation in the action that recognizes the court's jurisdiction. Additionally, his motion to quash is untimely. (Code Civ. Proc., § 418.10, subd. (a)(1).)

The motion to quash is denied.

**TENTATIVE RULING # 5: THE MOTION TO QUASH IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**6. JP MORGAN CHASE BANK N.A. v. LORENTZ, 24CV0447**

**Motion to Quash**

Before the court is defendant's motion to quash service of summons pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1) on the ground that the court lacks personal jurisdiction over defendant (both general and specific). Plaintiff filed an opposition. Defendant did not file a reply.

Personal jurisdiction may be asserted over nonresident defendants who make a general appearance in the action: "A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a); see *Fireman's Fund Ins. Co. v. Sparks Const., Inc.* (2004) 114 Cal.App.4th 1135, 1145.) Here, defendant filed an answer to plaintiff's complaint as well as a cross-complaint. His general appearance is participation in the action that recognizes the court's jurisdiction. Additionally, his motion to quash is untimely. (Code Civ. Proc., § 418.10, subd. (a)(1).)

The motion to quash is denied.

**TENTATIVE RULING # 6: THE MOTION TO QUASH IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**7. POWERS v. HAEN CONSTRUCTORS, ET AL., 24CV1422**

**Motion to Strike and/or Tax Costs**

Before the court is plaintiff's motion to strike and/or tax costs.

**1. Background**

Plaintiff filed the instant action in Sacramento County. On May 3, 2024, the Sacramento County Superior Court granted defendants' motion for change of venue to the El Dorado County Superior Court. Plaintiff was ordered to pay the transfer fees and costs, including the expenses and reasonable attorney fees awarded to the moving defendants. (Code Civ. Proc., § 399.)

On May 23, 2024, defendants filed a memorandum of costs. The total amount alleged is $12,079.35, which includes: (1) $2,253.15 for filing and motion fees; (2) $9,737.50 for attorney fees; (3) $38.70 for electronic filing fees; and (4) $50.00 for "other" fees. In their opposition brief, defendants contend that this amount has increased to $13,185.15 due to the time required in opposing the instant motion.

**2. Discussion**

The parties' briefings largely focus on whether plaintiff's venue selection was made in good faith. However, the Sacramento County Superior Court has already awarded defendants' attorney fees and costs. Thus, the only remaining issue is the reasonableness and necessity of defendant's alleged fees and costs.

Plaintiff specifically challenges the alleged $2,253.15 in filing fees, reasoning that the Sacramento County Superior Court requires only a $60.00 filing fee for a motion to change venue. Defendants point out that the filing fee for each of the five defendants was actually $435.00, as it was each defendant's initial filing in the matter. That amounts to a total of $2,175.00 ($78.15 less than what defendants allege). The court notes, however, that defendants would have had to pay the initial filing fee even if plaintiff had filed her complaint in the proper venue. Therefore, the court will award defendants $60.00 each for filing fees (the filing fee for a motion to change venue), totaling $300.00.

Next, defendants claim $10,817.50[3] in attorney fees. Defense counsel submitted a declaration indicating that up through May 31, 2024, his hourly rate was $410. As of June 1, 2024, his hourly rate is $465.00. Attached to the declaration is a billing log for this matter. Having reviewed and considered the billing log, the court finds that $10,817.50 is an appropriate award of attorney fees.

The court awards $38.70 for electronic filing fees. The court denies the request for $50.00 of "other" fees, as it is unclear to the court what these alleged fees are for.

In total, the court awards defendants a total sum of $11,156.20 in fees and costs.

**TENTATIVE RULING # 7: THE MOTION TO STRIKE AND/OR TAX COSTS IS GRANTED IN PART AND DENIED IN PART. DEFENDANTS HAEN CONSTRUCTORS, LT EQUIPMENT, LLC, ROBERT HAEN, THOMAS HAEN, AND LYNN HAEN ARE AWARDED A TOTAL SUM OF $11,156.20 IN ATTORNEY FEES AND COSTS. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

[3] Defendants' memorandum of costs reflects $9,737.50 in attorney fees. However, the declaration submitted by defense counsel, as well as the attached billing log reflects $10,817.50, which appears to account for defense counsel's work performed on opposing the instant motion.