11-17-23
Dept. 9
Tentative Rulings

1. 23CV1664 IN THE MATTER OF MISSION BAY HOLDINGS, LLC

Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents.
2. That the Payee has been advised in writing to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits A, B, C, and I to the Petition.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Exhibits A and B.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Exhibit I.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests**.** The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition submitted generally contains the information required by the Insurance Code for court approval of this transaction. In particular, Exhibit I, the Declaration of the Payee, indicates that she has the capacity, knowledge and maturity level to enter into this transaction.

TENTATIVE RULING #1: ABSENT OBJECTION, THE PETITION IS APPROVED 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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2. 22CV0920 WOOD v. TINGLER

Attorney Withdrawal

Counsel for the Defendants 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 the clients have rendered it unreasonably difficult for the lawyer to carry out representation effectively, that the clients have breached a material term of an agreement with, or obligation to the lawyer relating to the representation, and that Petitioner has given the clients warning that of the withdrawal.

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 by mail on the Defendants at their last known address and on counsel for Plaintiff was filed on August 25, 2023, and additional proof of personal service was filed on October 25, 2023.

A Notice of Non-Opposition was filed on November 9, 2023.

There is a Case Management Conference scheduled on January 22, 2024, at 10:30 a.m. in Department 10. The proposed Order submitted by counsel for Defendants does not list this upcoming hearing date as required by California Rules of Court, Rule 3.1362(e), as counsel did not have notice of that hearing date when the motion was filed.

TENTATIVE RULING #2: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO FILE A NEW PROPOSED ORDER THAT INCLUDES THE UPCOMING HEARING DATE AND 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).

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3. PC20200307 LOEWEN v. MASTEN

Preliminary Injunction

The underlying action to this motion for preliminary injunction is set forth in the July 11, 2022, First Amended Complaint requesting quiet title to an easement, declaratory relief and an injunction enjoining Defendants from interference with Plaintiffs access to that easement.

Defendants argue that any preliminary injunction protecting Plaintiffs' use of the easement should be made subject to two conditions: 1) that the gate access be locked such that only Plaintiffs, and not members of the public, would have access to the easement through the use of keys or codes provided by Defendants; and 2) that the easement be subject to a requirement that Plaintiffs be required to pay for the maintenance and repair of the easement area pursuant to Civil Code § 845.

Plaintiffs respond that the motion at issue is for preliminary injunction during the pendency of the proceeding and not for an interpretation of the scope of the easement. Further, Plaintiffs note that as to the issues of maintenance and repair duties the easement is unimproved and has no structures or features that require maintenance. Plaintiffs have represented that they are willing to post a bond up to $5,000 as a condition of the preliminary injunction in order to protect Defendants' interests pending the resolution of the litigation.

Request for Judicial Notice

Plaintiff has filed a Request for Judicial Notice of the court's Ruling on a Submitted Matter, dated June 8, 2023, as well as of a sequence of recorded grant deeds related to the contested easement. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452(c) lists among the matters of which the court may take judicial notice, "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States." Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States."

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

Standard of Review

The determination whether to issue a preliminary injunction pending trial on the merits requires the trial court to exercise its discretion by considering and weighing:

> "'two interrelated factors,' specifically, the likelihood that plaintiffs will prevail on the merits at trial, and the comparative harm to be suffered by plaintiffs if the injunction does not issue against the harm to be suffered by defendants ... if it does." (*King v. Meese* (1987) 43 Cal.3d 1217, 1226, 240 Cal.Rptr. 829, 743 P.2d 889.) The more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. (*Id* at p. 1227, 240 Cal.Rptr. 829, 743 P.2d 889.) Further, "if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor. [Citation.]" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 447, 261 Cal.Rptr. 574, 777 P.2d 610.)

Right Site Coal. v. Los Angeles Unified Sch. Dist., 160 Cal. App. 4th 336, 338–39 (2008).

The court "examines all of the material before it in order to consider 'whether a greater injury will result to defendant from granting the injunction than to the plaintiff from refusing it.'" Bennett v. Lew, 151 Cal. App. 3d 1177, 1183, (1984). "In making that determination the court will consider the probability of the plaintiff's ultimately prevailing in the case and, it has been said, will deny a preliminary injunction unless there is a reasonable probability that plaintiff will be successful in the assertion of his rights." Id.

> It is a rule so universally followed and so often stated as to need only to be referred to that the granting, denying, dissolving, or refusing to dissolve a preliminary or temporary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case." It is further the rule that "The discretion, however should be exercised in favor of the party most likely to be injured."

McCoy v. Matich, 128 Cal. App. 2d 50, 52, (1954) (citations omitted).

Whether a particular use of land by the servient owner is unreasonable interference is a question of fact. Dolnikov v. Ekizian, 222 Cal. App. 4th 419, 430 (2013).

In light of this standard of review, the court will consider the circumstances of this case.

First, the court finds that the Plaintiffs have a likelihood of success on the merits, based upon the court's prior analysis of the case in its June 8, 2023, Ruling on Submitted Matter, in which the court granted summary adjudication on the issue of Plaintiffs' right to quiet title and to an injunction.

The second question to be considered is the balance of hardships on the parties. In support of its request to be allowed to erect a fence and gate Defendants argue that there is nothing in the terms of the easement that prohibits the erection of a gate so long as Plaintiffs have keys or codes required to open it, and that having to unlock gates would not be a hardship

to the Plaintiffs. Defendants cite McCoy v. Matich, 128 Cal. App. 2d 50, 54 (1954) and Dolske v. Gormley, 58 Cal. 2d 513, 520 (1962) in support of this contention. In McCoy v. Matich the gates at issue were only to be locked at night and on holidays. The court found that this arrangement would not greatly injure the plaintiff in that case, whose principal claim to the easement was for the installation of utilities and whose principal complaint against the defendant was related to the alteration of the grade of the roadway. In that case the plaintiff did not take issue with the matter of locking the gates on nights and weekends. In Dolske v. Gormley the court held that the Defendant could erect a fence without harming Plaintiff's access to an easement. In that case, however, the court's ruling was in the context of an easement that was granted for vehicular access, where the fence erected by the defendant did not interfere with the vehicular access but did interfere with an additional claim to the right to use the easement for pedestrian access that the plaintiff claimed by prescription, and which was outside the scope of the litigation. Those cases do not support Defendants' right in this case to maintain locked gates at all times that directly restrict Plaintiffs use of the easement for its intended purpose under the particular facts of this case.

In another case cited by Defendants, Scruby v. Vintage Grapevine, Inc., 37 Cal. App. 4th 697 (1995) the court found that under the facts specific to that case the defendant's placement of water tanks and grapevines in a portion of the easement area did not unreasonably interfere with the plaintiffs' use of the 52-foot wide easement for ingress and egress to plaintiffs' property. The facts of that case are not analogous to the case before this court.

Defendant also argues that a locked gate is necessary for safety reasons to protect Defendants' property from public access. As in the case of Bennett v. Lew, 151 Cal. App. 3d 1177, 1185–86 (1984), the court finds that there is no evidence in the record of any safety issues that in balance would justify restricting Plaintiffs' access through the installation of locked gates.

Finally, Defendants argue that any injunction should include a requirement that Plaintiffs be required to maintain and repair the easement area. The court's June 8, 2023, Ruling on Submitted Matter considered and rejected this argument that a duty to repair and maintain the easement is a condition precedent to its use or enforcement. The court found that the language of the easement and statutory requirements are in effect and available to Defendants to the extent they are applicable. Further, the area of the easement is an unimproved pathway, and to the extent the Defendants' rights may be affected by enforcing the easement through a preliminary injunction, the Plaintiffs have offered to maintain a bond.

For all of these reasons the court finds that on balance the granting of Plaintiffs' motion for a preliminary injunction preventing Defendant from locking gates that interfere with

Plaintiffs' access to the easement will not result in harm to the Defendants that is greater than the harm Plaintiffs would suffer if the gates were locked. This finding is reinforced the requirement that the Plaintiffs post a bond in the amount of $5,000 to protect Defendants' interests pending the resolution of the litigation.

TENTATIVE RULING #3: PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION IS GRANTED SUBJECT TO THE REQUIREMENT THAT PLAINTIFS POST A BOND IN THE AMOUNT OF $5,000.

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4. 22CV1082 NAJAFPIR v. VISIONARY REALITY GROUP, INC., ET AL

Attorney Withdrawal

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

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the attorney and client have had a breakdown in relationship and communication.

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 by mail on the Plaintiff at his last known address and on counsel for Plaintiff was filed on August 24, 2023.

There is a hearing on an oral decision currently scheduled for December 1, 2023. The proposed Order submitted by counsel for the Plaintiff does not list this upcoming hearing date as required by California Rules of Court, Rule 3.1362(e), as it was scheduled after counsel's motion was filed.

TENTATIVE RULING #4: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO FILE A NEW PROPOSED ORDER THAT INCLUDES THE UPCOMING HEARING DATE AND 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).

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5. 23CV1486 NAME CHANGE OF HUNTER

Petition for Name Change

Petitioner filed a Petition for Change of Name on August 30, 2023.

Proof of publication was filed on October 9, 2023, 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 #5: 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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6. 22CV0175 DASGUPTA v. TUNDAVIA

Motion for Discovery Sanctions

Defendants move for issue, evidence or terminating sanctions against Plaintiff. Defendants request the court to dismiss Plaintiff' Fourth Cause of Action for defamation and the related claim for damages. In the alternative Defendant requests the court to find that the defamatory statements alleged in the Plaintiff's Fourth Cause of Action for defamation were made before September 2, 2020. Defendants seek reimbursement of attorney's fees and costs. In support of this motion Defendants submitted the Declaration of their counsel, Dennis M. Wilson in Support of Motion for Discovery Sanctions Against Ria Dasgupta, dated September 5, 2023 ("Wilson Declaration").

The discovery at issue was the subject of a motion to compel hearing before the court on July 7, 2023. No party having requested oral argument, the court adopted its tentative ruling, which was formally issued and filed on August 4, 2023. The court's Order required the Plaintiff to provide code-compliant responses to Requests for Admissions and Interrogatory No. 17.1 by July 28, 2023 and granted $2,000 in discovery sanctions to Defendants.

Both the Request for Admissions and Interrogatory No. 17.1 addressed the question of whether any of the defamatory statements alleged by Plaintiff occurred after September 2, 2020.

Following the court's Order, Plaintiff apparently filed a Second Amended Response to the Interrogatory on August 25, 2023. Wilson Declaration, ¶9. The Wilson Declaration attaches some documents that were apparently included with Plaintiff's amended response to the discovery requests. Wilson Declaration, Exhibit D-J.

Defendants argue that these responses remain inadequate. A meet and confer letter was emailed to Plaintiff's counsel on August 28, 2023, to which there is no record that the Plaintiff responded. Wilson Declaration, Exhibit C.

On September 6, 2023, Defendants' counsel filed a Statement of Defendant's Interrogatories and Ria Dasgupta's Responses in Dispute. In that Statement, portions of Plaintiff's amended discovery responses are excerpted, but the amended responses are not attached.

Plaintiff's counsel filed a Declaration of Daryl J. Lander, dated October 27, 2023 ("Lander Declaration"). The contents of that Declaration that are relevant to the discovery responses states at Paragraph 4 that Plaintiff did provide supplemental responses following the court's Order: "Plaintiff searched through all information in her possession and control, and provided the best responses she could to the discovery." And at Paragraph 5: "Plaintiff did properly

respond to the outstanding discovery by providing clear and concise responses as ordered, and further gave all information in her possession, access and control."

Unfortunately, neither party has filed the amended discovery responses with the court, making it impracticable to assess the Plaintiff's compliance with the court's prior order. Further, the court notes that, apart from Defendant's email of August 28, 2023, setting out the asserted defects in the amended response, the parties have not met and conferred on the remaining issues associated with the discovery responses. The court's July 7, 2023 tentative ruling sets out a clear statement of the statutory elements that are missing from the discovery responses that would render them responsive and code-compliant.

TENTATIVE RULING #7: THE MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 5, 2024, IN DEPARTMENT NINE. THE PARTIES ARE ORDERED TO MEET AND CONFER IN PERSON OR BY TELEPHONE PRIOR TO THE HEARING, AND IF THERE ARE CONTINUING MATTERS IN DISPUTE AT THE TIME OF THE HEARING THE PARTIES ARE ORDERED TO FILE WITH THE COURT A COMPLETE COPY OF PLAINTFF'S MOST RECENT RESPONSES TO THE DISCOVERY REQUESTS AT LEAST FIVE DAYS PRIOR TO THE HEARING DATE. NO FURTHER BRIEIFING IS REQUIRED.

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. PC20190309 CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES

Demurrer

This action originates in a series of contracts, referred to as the initial "Master Agreement" and the subsequent "Amended Operating Agreement" entered into by the City of Rocklin ("City") and Legacy Family Adventures ("LFA") for the design and operation of an adventure park ("Park") in an old quarry site. When the project failed to generate the anticipated level of revenue, City sued LFA for, among other things, fraud, misrepresentation, and breach of contract. The City's First Amended Complaint was filed on December 20, 2019.

Defendant/Cross-Complainant LFA filed a First-Amended Cross-Complaint ("FACC") in this action on October 19, 2020. The causes of action in the FACC as against Plaintiff/Cross-Defendant City included: 1) breach of contract, 2) breach of implied covenant of good faith and fair dealing; and 3) rescission of the Amended Operating Agreement.

Plaintiff/Cross-Defendant City of Rocklin ("City") filed its initial Answer to the FACC on October 27, 2020. On September 8, 2023, the court granted Plaintiff's motion to file a First Amended Answer ("FAA") to the FACC, and the City filed its FAA on September 11, 2023. The FAA adds two additional affirmative defenses:

1) The Seventeenth Affirmative Defense asserts "government immunity set forth by common law, in the Government Code, and by any other applicable provisions of state and federal law, including but not limited to Government Code sections 814, *et seq.*, 815, 815.2(b), 815.3, 818.8 and 820, *et seq.* 820.2, 820.9, and 822.2".
2) The Eighteenth Affirmative Defense states that "should there be any finding that any party violated-through any act or omission-any of the statutes, codes, rules, or regulations including, but not limited to [City's] Municipal Code, in forming or performing any contract documents at issue in this lawsuit . . . , then those applicable contract document(s) are void and unenforceable, as beyond the powers of the municipality."

LFA's demurrer to the Seventeenth and Eighteenth Affirmative Defenses is based on Code of Civil Procedure § 430.20(a) (the answer does not state facts sufficient to constitute a defense) and the demurrer to the Eighteenth Affirmative Defense additionally relies on § 430.20(b) (the answer is uncertain).

Code of Civil Procedure § 430.20 allows a party against whom an answer has been filed to demur to the answer on the grounds either that the answer does not state facts sufficient to constitute a defense, or because the answer is uncertain (*i.e.,* ambiguous or unintelligible). The demurrer to an answer may be based upon any ground that appears on the face of the

pleading, or from any matter of which the court may take judicial notice. Code of Civil Procedure § 430.30(a). The demurrer may be taken to the entire answer, or it may be directed at any of the defenses contained in the answer. Code of Civil Procedure § 430.50(b).

Meet and Confer Requirements

The City argues that LFA failed to meet and confer in person or by telephone on the demurrer at least five days prior to the hearing on the demurrer, as required by Code of Civil Procedure § 430.41(a).

The FAA was filed on September 11, 2023, and was served on LFA by email on the same day. The deadline for meet and confer efforts was September 20, 2023. Code of Civil Procedure § 430.41(a)(2). On September 25, 2023, the same day the demurrer was filed, LFA filed a Declaration of Demurring or Moving Party Regarding Meet and Confer (Judicial Council Form CIV-140) describing the meet and confer efforts. Attached was a detailed email to counsel for the City dated Thursday, September 21, 2023, raising legal issues with the FAA and requesting a prompt response given that the deadline for filing the demurrer was the following Monday, September 25, 2023. There is no record that the City responded to that communication. The Declaration set forth various reasons for LFA counsel's inability to meet and confer by telephone or in person in the extremely short time available and the court finds that those reasons constitute good cause and substantial justification for the inability to meet and confer in person or by telephone under the circumstances. Further, Code of Civil Procedure §430.41(a)(4) provides that any finding that the meet and confer efforts did not meet the requirements of the statute shall not be grounds to overrule or sustain a demurrer.

Seventeenth Affirmative Defense: Government Immunities

In response to the City's assertion of an affirmative defense based on government immunities, LFA demurs on the ground that the City has not stated facts sufficient to constitute a defense.

The City has listed a litany of government immunity statutes between Sections 814 and 822.2 of the Government Code. Each of the referenced sections is contained within Division 3.6, Part 2 of the Government Code, titled "General Provisions Relating to Liability". The first statute contained in that Part is Section 814, which states: "Nothing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee." As discussed at length in a recent case from the California Supreme Court, Cnty. of Santa Clara v. Superior Ct., 14 Cal. 5th 1034 (2023), the immunities listed in Part 2 are primarily directed at tort claims and do not affect "liability based on contract." The other statutes referenced in the Seventeenth Affirmative Defense are all contained in the same Part

2, and refer to immunities from liability for "injuries" resulting from tortious acts of employees of public entities and elected officials acting within the scope of their public duties. Accordingly, these government immunity statutes have no application to LFA's first two causes of action for breach of contract and breach of implied covenant of good faith and fair dealing.

In its Opposition to the demurrer, the City correctly characterizes the FACC's third cause of action as a remedy, and not as a cause of action in itself. The City goes on to argue that the underlying cause of action for the remedy of recission is subject to government immunity statutes as a matter based on tort, not on contract because the underlying conduct alleged in the FACC are tortious acts of misrepresentation and economic coercion that induced LFA to enter into the agreement.

The case of Arthur L. Sachs, Inc. v. City of Oceanside, 151 Cal. App. 3d 315 (Ct. App. 1984) is useful precedent to analyze this issue. In that case a public agency sued a vendor over a contract related to the purchase and sale of real property. The vendor filed a cross-complaint and, after discovery revealed misrepresentation and fraud on the part of the public agency, he requested leave to file a second amended cross-complaint in which he sought recission of the contract based on the fraud and misrepresentation. Leave to amend the cross-complaint was denied and the vendor appealed that denial.

On appeal the public agency argued, just as the City is arguing in this case, that it was immune from liability for fraudulent misrepresentations, citing Government Code § 818.8: "A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional. "The court considered that argument in the context of Government Code § 814: "Nothing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee."

The court ultimately concluded that the government immunities asserted in that case did not apply notwithstanding the underlying allegations of concealment and misrepresentation by the public agency. The City distinguishes this case, stating that "here, the alleged misrepresentation in the [recission claim] concerns something nowhere in the contracts at issue." Instead, the misrepresentation that forms the basis of LFA's recission claim relates to bond funding for the Park, which was not part of the disputed contracts. Accordingly, City argues, the Arthur Sachs case does not apply and LFA's claim for recission is barred by government immunities because it is based, not on breach of contract, but on breach of a non-contractual duty.

The Court's holding in in Arthur Sachs, was not reliant on whether or not the misrepresentations related to a matter was contained within the four corners of the contract. Rather, the court held that:

> Whether an action is based on contract or tort depends upon the nature of the right sued upon, not the form of the pleading or relief demanded. If based on breach of promise it is contractual; if based on breach of a noncontractual duty it is tortious. (*Voth v. Wasco Public Util. Dist*., 56 Cal.App.3d 353, 356, 128 Cal.Rptr. 608.)
> If unclear the action will be considered based on contract rather than tort. (Id., at p. 357, 128 Cal.Rptr. 608.)

Arthur L. Sachs, Inc. v. City of Oceanside, 151 Cal. App. 3d 315, 322 (1984).

City argues that it had an absolute right to terminate the Master Agreement at the time that the Amended Operating Agreement was executed, and that accordingly, its conduct that resulted in termination of that Agreement through the adoption of a subsequent agreement was not a contractual breach. This argument does not take into consideration LFA's allegations of breach of contract and breach of the covenant of good faith and fair dealing with respect to the circumstances surrounding the termination of the Master Agreement. FACC ¶¶ 87(c), 100(g), 100(h).

As to the question of whether the recission claim in itself seeks relief other than money or damages," while there are prayers for money damages listed in the FACC, they are not associated with the recission claim, which by definition is an equitable remedy. Eminence Healthcare, Inc. v. Centuri Health Ventures, LLC, 74 Cal. App. 5th 869, 881 (2022). Instead, the claims for money damages are expressly contained within the causes of action related breach of contract. See FACC ¶¶89, 101.

Eighteenth Affirmative Defense: Master Agreement and Amended Operating Agreement are Void and Unenforceable

An answer to a complaint, or in this case, a cross-complaint, is required to contain 1) a general or specific denial of the material allegations in the cross-complaint that are controverted by the cross-defendant, and 2) a statement of any new matter constituting a defense. Code of Civil Procedure § 431.30(b).

> The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. (*Shropshire v. Pickwick Stages, Northern Division* (1927) 85 Cal.App. 216, 219 [258 P. 1107].) Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as "new matter." (*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 543 [81 P.2d 533].)

State Farm Mut. Auto. Ins. Co. v. Superior Ct., 228 Cal. App. 3d 721, 725 (1991).

The First Amended Answer at issue in this demurrer contains a general denial of "each and every allegation of the [FACC]". Nowhere in the FACC is there any factual allegation related

to City's compliance or non-compliance with public procurement laws with respect to the Master Agreement or the Amended Operating Agreement. Therefore, the City's general denial does not place at issue any factual allegation related to compliance with public contacting statutes in the procurement of those two agreements. The only such allegation in the FACC relates to the City's contract with Bonsai Design for construction of the park, which is not relevant to the City's asserted affirmative defense addressing the validity of the Master Agreement and Amended Operating Agreement between the City and LFA. FACC, ¶¶ 3-4, 35-43.

In considering a demurrer, the court is required to admit "all material and issuable facts properly pleaded. . . . However, it does not admit contentions, deductions or conclusions of fact or law alleged therein." Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 713 (citations omitted.)

Apart from the City's general denial of the facts alleged in the FACC, the City's FAA does not add any factual allegations related to its "a statement of [a] new matter constituting a defense." Instead, the Eighteenth Affirmative Defense states that it would apply "*should there be any finding* that any party violated-through any act or omission-any statute, code, rule or regulations, . . ." (Emphasis added.) LFA argues that this affirmative defense is a conclusion that is not supported by any allegation of fact. The City objects to the demurrer to this affirmative defense because it contends that it is disingenuous to demand "that the City identify information before any 'findings' have issued." The City's argument disregards the scope of the court's inquiry in the context of a demurrer, which is limited to admitting "the truth of all material facts in the pleading but not contentions, deductions or conclusions of fact or law." Aubry v. Tri-City Hosp. Dist. (1992) 2 Cal. 4th 962, 966-967; Serrano v. Priest (1971) 5 Cal. 3d 584, 591; Adelman v. Associated Int'l Ins. Co. (2001) 90 Cal. App. 4th 352, 359. The City's reference to the possibility of a future finding is unattached to any existing allegation in the pleadings of the parties or any matter of which the court might take judicial notice.

The City submitted the Declaration of Christopher Kolkey, dated November 3, 2023 ("Kolkey Declaration") in support of its opposition, presumably to offer 'facts' on which its arguments in opposition to the demurrer might rely. This Declaration attaches LFA's responses to Form Interrogatories-General (Set One) and recently propounded Special Interrogatories (Set Six), as well as the court's tentative ruling on LFA's motion for judgment on the pleadings.

With respect to LFA's responses to the Form Interrogatories, only Interrogatory Nos. 14.1, 17.1 and 50[1] address public contracting laws, and, even if it were appropriate to consider

[1] Form Interrogatory 14.1: LFA's response alleges that City may have violated public contracting statutes in the retention of Bonsai Design for construction of the park, specifically public contracting requirements involving

these discovery responses in the context of a demurrer, none of LFA's responses create any factual support for the City's Eighteenth Affirmative Defense to causes of action based on the Master Agreement and Amended Operating Agreement.

With respect to LFA's responses to the recently propounded Special Interrogatories, Set Six, LFA's responses consist entirely of objections to the contents of the Interrogatories and are not factual statements.

The City also attached the court's May 25, 2023 tentative ruling on LFA's motion for judgment on the pleadings, which had been the subject of continuing hearings held on July 14, 2023, August 18, 2023 and October 6, 2023. At the hearing on October 6, 2023, the court made oral rulings that did not adopt the conclusions of the written tentative ruling, and the City was ordered to submit a proposed Order reflecting the outcome of those hearings. As of the date of the City's filing of its FAA on September 28, 2023, that proposed Order had not yet been drafted by the City, and as of the date of this tentative ruling, the court's Order on LFA's motion for judgment on the pleadings has not been finalized because of the parties' continuing dispute over the specific language to be contained in the Order. See City's Letter to the court dated October 17, 2023. Nevertheless, even assuming that the language of an unfinalized tentative ruling which, following oral arguments, had been disregarded in the court's subsequent ruling might be cognizable in the context of this demurrer, the language of the tentative ruling does not support the City's position.

The City's Complaint alleged that LFA misrepresented its qualifications to perform the contract with the City and thereby fraudulently induced the City to contract with LFA for the operation of the Park. On February 27, 2023, Defendant LFA filed a motion for judgment on the pleadings seeking dismissal of the City's causes of action that were based on fraud and negligent misrepresentation. Among LFA's arguments was that the City could not maintain a cause of action for fraud because it had either constructive notice of LFA's qualifications or an independent duty of to investigate LFA's qualifications to enter into the contract. The City

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insurance, bid security, payment bond, performance bond, contractor licensing and payment of prevailing wages. Kolkey Declaration, Exhibit A, page 21.

Response to Form Interrogatory No. 17.1 re: Request for Admissions #32: "[LFA] is in the process of reviewing the Amended and Restated Adventure Park Operating Agreement to determine its validity and enforceability." Kolkey Declaration, Exhibit A, page 35.

Form Interrogatory No. 50.5: "Is any agreement alleged in the pleadings unenforceable?" . . . "Responding Party has not yet completed its review and evaluation of the agreements alleged in Propounding Party's pleading and, therefore, is unable to respond to this interrogatory at this time." Kolkey Declaration, Exhibit A, page 40.

responded that in cases involving intentional fraud there is no duty of investigation. In its analysis of the motion for judgment on the pleadings the court's tentative ruling noted that it is generally true that the victim of intentional fraud is not required to affirmatively investigate the fraudulent representations as a prerequisite to maintaining a cause of action. However, the court noted that the specialized facts of this case were subject to express statutory law applicable to public contracting, such that, as a matter of law in the context of a motion for judgment on the pleadings, the City did have an express, statutory duty of investigation under any circumstance in which it awards a public contract. The court's tentative ruling made no finding that the City had or had not complied with contracting statutes. The ruling merely found, that as a matter of law, a public entity entering into a public contract is bound by statutes that create an independent duty of investigation. Accordingly, there is nothing in the language of the superseded tentative ruling that creates any factual finding or even any allegation as to whether or not the City complied with public contracting laws.

The City repeatedly asserts that LFA has contended that the City has violated public contracting laws with respect to the Master Agreement and Amended Operating Agreement, yet LFA has made no such allegation. Indeed, LFA's FACC relies upon the existence of these agreements as the basis for its claims against the City[2]. The issue of compliance with public contracting statutes in the procurement of the Master Agreement and Amended Operating Agreement has only arisen in this case in the context of the City's cause of action for fraud, against which LFA defended itself by responding that the City could not claim to have been defrauded when it had both constructive notice of LFA's history of contract performance and a duty of investigation as part of its public contracting process.

Failure to plead the ultimate facts supporting a cause of action [or affirmative defense] subjects a pleading to a demurrer. Cal. Civ. Pro. § 430.10(e); Berger v. Cal. Ins. Guar. Ass'n. (2005) 128 Cal. App. 4th 989, 1006. Reliance on unrelated discovery responses, possibilities that have been suggested in draft documents and speculation about potential future findings is not a substitute for allegations contained in pleadings:

> A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879 [138 Cal.Rptr. 426].) The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. (See *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 605 [176 Cal.Rptr. 824].)

[2] Although the FACC seeks recission of the Amended Operating Agreement, that cause of action is based on allegations of the City's misrepresentations that induced LFA to enter that agreement, not on any violation of public contracting laws.

Fremont Indem. Co. v. Fremont Gen. Corp., 148 Cal. App. 4th 97, 113–14 (2007).

LFA's demurrer to the FAA's Eighteenth Affirmative Defense is sustained.

Leave to Amend

With respect to the Seventeenth Affirmative Defense, there is no reasonable possibility that additional allegations might convert the nature of a claim for recission of a contract from a contractual to a tortious cause of action.

However, with respect to the Eighteenth Affirmative Defense, the City might yet allege that it acted in violation of public contracting statutes and so cure the defect in its pleading.

TENTATIVE RULING #7:

(1) CROSS-COMPLAINANT LFA'S DEMURRER TO SEVENTEENTH AFFIRMATIVE DEFENSE IN THE FIRST AMENDED ANSWER IS SUSTAINED WITHOUT LEAVE TO AMEND.
(2) CROSS-COMPLAINANT LFA'S DEMURRER TO THE EIGHTEENTH AFFIRMATIVE DEFENSE IN THE FIRST AMENDED ANSWER IS SUSTAINED WITH LEAVE TO AMEND.

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. 23CV1104 MCDOWELL v. EL DORADO COUNTY SHERIFF

Demurrer

On July 10, 2023, Plaintiff filed a Complaint for negligence against the El Dorado County Sheriff's Office ("County") based on an incident that occurred on October 20, 2022.

Request for Judicial Notice

County has filed a Request for Judicial Notice of the claim Plaintiff submitted to the County on July 10, 2023 and the Notice of Return of Late Claim that was issued to Plaintiff on August 9, 2023. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States." Evidence Code § 452(c).

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

Standard of Review

Code of Civil Procedure § 430.10(e) allows a party to file a demurrer challenging a complaint if it fails to "state facts sufficient to constitute a cause of action."

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

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

Government Claims Act

County argues that the Complaint should be dismissed for failure to state a cause of action against the County because the Plaintiff failed to comply with the Government Claims Act (Government Code §§ 810 et seq.) by first filing a claim.

"[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, . . ." Govt Code § 945.4. "A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action." Gov't Code § 911.2.

On July 10, 2023, Plaintiff filed a claim with the County of El Dorado on the same day as the filing of the Complaint. On August 9, 2023, the County returned a Notice of Return of Late Claim because the claim was filed more than six months after the incident upon which it was based. *See* Declaration of Derick E. Konz in Support of Defendant's Demurrer to Plaintiff's Complaint, dated July 15, 2023, Exhibits A and B. Plaintiff did not submit an application for leave to present a late claim pursuant to Government Code § 911.4, which would have allowed Plaintiff to submit such an application up to one year from the date of the accrual of the cause of action.

County further argues that the claim should be dismissed on the grounds of government immunity, and because law enforcement does not have a duty to make arrests or issue a restraining order, which was the failure alleged in the Plaintiff's Complaint. However, the court need not reach those issues because the Complaint is barred by the failure to file a claim within the statutory deadlines of the Government Claims Act within six months or an application to file a late claim within one year. Additionally, the County's demurrer is unopposed.

TENTATIVE RULING #8: DEFEDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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. 23CV0744 FAGEN v. HOWARD

Demurrer

Defendant Josh Williams files this demurrer to Plaintiff's Complaint, arguing that it fails to state facts that constitute a cause of action against Defendant Williams.

Standard of Review

Code of Civil Procedure § 430.10(e) allows a party to file a demurrer challenging a complaint if it fails to "state facts sufficient to constitute a cause of action."

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

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

The Complaint alleges the Defendants breached a contract for the purchase and sale of restaurant equipment. The Complaint attaches a copy of the contract, which states that Josh Williams is one of the named buyers; however, the contract is signed only by Defendant Paul Howard. Complaint, Exhibit A. The check for the initial deposit was executed by Paul Howard and is drawn from Paul Howard's bank account. Complaint, Exhibit B.

Defendant Josh Williams is referenced in the contract's initial recitation as one of the named buyers, he is named as the party who will take inventory of the equipment in Section 8 of the contract, and the contract states in Section 15(f) that "This Agreement shall be executed on behalf of . . . Josh Williams and Paul Howard by Paul Howard."

There is no allegation that Josh Williams performed any part of or accepted any benefit under the contract. There is no allegation that the two Defendants were part of a partnership, agency or joint venture that could be the basis for enforcing the contract against him as a non-signatory. The Complaint alleges that the agreement was made between "Mike Fagan (formerly known as Beef 'N' Brew) and Paul Howard." (Complaint BC-1)

The second Cause of Action for "Common Count" does not allege any additional facts. The demurrer is unopposed.

TENTATIVE RULING #9: DEFENDANT JOSH WILLIAMS' DEMURRER IS SUSTAINED WITH LEAVE TO AMEND.

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. PC20200294 ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD

Demurrer

On June 20, 2023, Cross-Defendant Georgetown Divide Recreation District ("District") filed a demurrer to the Second Amended Cross Complaint ("SACC"), filed on February 10, 2023, related to disputes that have arisen about easements that are the subject of this litigation.

The SACC was filed by private property owners against the District and other public entities, including El Dorado County ("County"). The relief requested in the SACC includes general and special damages, costs and attorney's fees, a quiet title judgment recognizing the claimed easements, reformation of the 1977 grant deed of the real property at issue from a private property owner to El Dorado County and of the 1990 grant deed of that property from the County to the District, and a judicial declaration establishing the details of the claimed easements.

With respect to the District and the causes of action that are subject to this demurrer, the SACC alleges that the District 1) was unjustly enriched by restricting access to its property and refusing to enforce local codes and ordinances (SACC ¶¶44-49); 2) has falsely imprisoned Cross-Complainants by preventing access to its easement through the use of unpermitted gates with inaccessible locks (SACC ¶¶50-55); 3) has created a nuisance by obstructing access to the easement and interfering with Cross-Complainants' use and enjoyment of their property, and has created an attractive nuisance by maintaining public bathrooms on its property (SACC ¶¶56-66); 4) has violated the Americans With Disabilities act by installing and maintaining gates that are inaccessible (SACC ¶¶67-73); 5) breached its contract to approve and maintain the easement (SACC ¶¶74-82); 6) breached a covenant of good faith and fair dealing by failing to approve and maintain the easement (SACC ¶¶83-96); and 7) has extorted Cross-Complainants through its actions in restricting access to the easement at issue (SACC ¶¶97-101).

<u>Request for Judicial Notice</u>

The District has filed a request for the court to take judicial notice of several pleadings, declarations and rulings on file with the court in this case. District's Request for Judicial Notice in Support of Demurrer to the Second Amended Cross-Complaint, filed June 20, 2023.

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

States or any public entity in the United States." Evidence Code §§ 452(b), 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Accordingly, District's Request for Judicial Notice is granted.

Standard of Review

Code of Civil Procedure § 430.10(e) allows a party to file a demurrer challenging a complaint if it fails to "state facts sufficient to constitute a cause of action."

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

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

Government Claims Act

The District argues that the First through Seventh Causes of Action in the SACC should be dismissed for failure to state a cause of action against the District because the parties that filed the SACC failed to comply with the Government Claims Act (Government Code §§ 810 et seq.) by first filing a claim with respect to the District.

"[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, . . ." Govt Code § 945.4. "A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action." Gov't Code § 911.2.

On July 28, 2022, August 14, 2022, and October 7, 2022 Cross-Complainants filed claims with the County of El Dorado prior to filing the Cross-Complaint. SACC ¶40-42, Exhibit I, J, K. On

October 13, 2022, a copy of the claim filed with El Dorado County was emailed by one of the Cross-Complainants to counsel for the District. SACC ¶43, Exhibit L.

The District is a separate "local public entity" (Government Code § 900.4) from the County and as such, pre-litigation claims must be submitted separately to its governing body by any of the means authorized in Government Code § 915.

Substantial Compliance

Cross-Complainants argue that the court should find that they substantially complied with the Government Claims Act based on the email of a copy of the El Dorado County claim to counsel for the District on October 13, 2022, citing Pacific Tel. & Tel. Co. v. County of Riverside (1980) 106 Cal.App.3d 183, City of San Jose v. Superior Court (1974) 12 Cal.3d 447, and DiCampli-Mintz v. County of Santa Clara (2012) 55 Cal.4th 983. The District responds that the holdings of those cases do not support making an exception to the general rule under the facts of this case.

In DiCampli-Mintz v. County of Santa Clara (2012) 55 Cal.4th 983, the California Supreme Court overruled an appellate court opinion which held that "a claim may substantially comply with the act, notwithstanding failure to deliver or mail it to one of the specified recipients, if it is given to a person or department whose function include the management or defense of claims against the defendant entity." Id. at 987. In that case, notice of a claim was delivered to the Risk Management Department of the hospital against which the claim was directed. The hospital was operated by the county, and the claim was never served, presented or mailed to the county clerk or the clerk of the county Board of Supervisors. The Court held that "[e]ven if the public entity has actual knowledge of facts that might support a claim, the claims statute must still be satisfied." Id. at 990. "The claimant bears the burden of ensuring that the claim is presented to the appropriate public entity." Id. at 991.

The Court noted that Government Code § 915(e)(1) provides that "[a] claim, amendment, or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if, within the time prescribed for presentation thereof, . . . It is actually received *by the clerk, secretary, auditor, or board of the local public entity*." (Emphasis added.) However, citing Life v. Cnty. of Los Angeles, 227 Cal. App. 3d 894, 901 (1991), the Court held that the plain language of the Government Claims Act nevertheless clearly mandates that "[i]If an appropriate public employee or board never receives the claim, an undelivered or misdirected claim fails to comply with the statute." DeCampli-Mintz at 992.

The holding of Pac. Tel. & Tel. Co. v. Cnty. of Riverside, 106 Cal. App. 3d 183, (1980) is likewise not helpful to Cross-Complainants. In that case the court affirmed the trial court's denial of a widow's claim for wrongful death for lack of filing a claim with the county government even though the decedent's employer had filed a timely claim for the same incident. Even though the county had notice of the incident, it did not have notice of her claim. "It is well-settled that claims statutes must be satisfied even in face of the public entity's actual knowledge of the circumstances surrounding the claim. Such knowledge—standing alone—constitutes neither substantial compliance nor basis for estoppel." Id. at 191, citing City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 455.

Cross-Complainants cite the following passage from the City of San Jose opinion to argue that the court should find substantial compliance with the Government Claim Act in this case: "Is there sufficient information disclosed on the face of the filed claim to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit?" City of San Jose v. Superior Ct., 12 Cal. 3d 447 at 456. However, that passage refers to a class of claims "where there has been *some* compliance with all the required elements-but compliance has been *defective*." Id. (emphasis in original.) The examples cited by the Court involve defects such as minor typographical errors in an address or location, or verification of the claim by a parent instead of a claimant who is a minor child. The Court goes on to opine that substantial compliance cannot sustain a claim where the claimant failed to comply "entirely with a particular statutory requirement", such as failure to state an address or location. In this case, there is a failure to comply with the statutory requirement of delivering, or even attempting to deliver, the claim to the "the clerk, secretary, auditor or to the governing body at its principal office." Government Code § 915. Accordingly, there is no basis for finding substantial compliance consistent with the Supreme Court's standard under the facts of this case.

Statute of Limitations

The claim that was presented to El Dorado County was dated October 7, 2022, and alleged that the District failed to approve maps of the easement on May 23, 2022. That allegedly wrongful act is among the allegations underlying the First, Fifth and Sixth Causes of Action. (SACC ¶¶18, 32, 38, 49, 79, 89, 91-95). With respect to the issue of District's approval of maps of the easement, the deadline for filing a claim related to that omission was, at the latest, May 23, 2023. Government Code §§ 911.2(a), 911.4(b).

The claims based on the erection and maintenance of gates interfering with access to the easement are alleged with respect to the First, Second, Third, Fourth, Sixth and Seventh Causes of Action (SACC ¶¶22, 23, 26, 27, 30, 48, 51-52, 58-59, 61, 70, 90, 98). There are no specific dates in the SACC that establish when those fences and gates were constructed;

however, the SACC at paragraph 34 states that on May 17, 2021, Cross-Complainants "who were then solely Defendants in this matter, filed an Opposition to Motion for Preliminary Injunction" in which they "alleged that the fencing erected by GDRD blocked their access to the Highway 49 Easement, that the unpermitted gate constructed by GDRD at the entrance to the Highway 49 Easement created a public safety hazard, and that gates and fencing were erected by GDRD and AAE in an effort to make Cross-Complainants abandon the Highway 49 Easement."

Thus, it has been more than two years since the events related to the erection and maintenance of gates alleged in the SACC, and Cross-Complainants claims against the District related to those events are barred for failure to comply with the requirements of the Government Claims Act. The statutory deadlines for filing such claims has long since expired.

Finally, the Third Cause of Action alleges that the District has maintained an attractive nuisance by the construction of public restrooms. First Amended Cross-Complaint, ¶ 56. That allegation was included in the First Amended Cross-Complaint which was filed on August 4, 2022, and is likewise subject to the one-year limitation for the filing of claims.

Leave to Amend

Given that the statutory deadline for filing claims related to the District's failure to approve maps reflecting the easement submitted by Cross-Complainant, for the erection of gates and fences restricting access to the disputed area, and for the construction of public restrooms, there would be no benefit in granting leave to amend the affected causes of action.

TENTATIVE RULING #10:

(1) CROSS-DEFENDANT GEORGETOWN DIVIDE RECREATION DISTRICT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) CROSS-DEFENDANT GEORGETOWN DIVIDE RECREATION DISTRICT'S DEMURRER AS TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION OF THE SECOND AMENDED CROSS-COMPLAINT IS SUSTAINED WITHOUT LEAVE TO AMEND.

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. 21CV0167 CLAIM OF BUTTERFIELD

Pre-Trial Conference

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, 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. PC20190143 DEWATER v. HOSOPO CORP. ET AL

Review Hearing

TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, IN DEPARTMENT NINE.

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

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13. 23CV1554 NAME CHANGE OF LUONG

Petition for Name Change

Petitioners Diem Thi Luong and Son Thanh Luong filed Petitions for Change of Name on September 12, 2023.

Proof of publication for both Petitioners was filed on October 20, 2023, as required by Code of Civil Procedure § 1277(a).

Background checks have been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #13: ABSENT OBJECTION, THE PETITIONS ARE 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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14. 23CV0924 LOANDEPOT.COM LLC v. VIAINAU

Order of Examination Hearing

TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, 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. 22CV1330 NAME CHANGE OF VALLIAMMAL

Petition for Name Change

This petition for a name change was filed on August 22, 2022. Proof of publication was filed on November 4, 2022. The matter was scheduled for hearing and continued on April 14, 2023, March 10, 2023, February 1, 2023, December 2, 2022, and November 4, 2022 due to the lack of a background check for Petitioner, as required by Code of Civil procedure § 1279.5(f).

On May 8, 2023, the court received a letter from Petitioner's mother requesting the matter be continued, as petitioner is currently an inmate in El Dorado County Jail and has been transferred to State Hospital.

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, IN DEPARTMENT NINE.

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16. PC20210120 PEOPLE OF THE STATE OF CALIFORNIA v. GIAR KUNG

Trial Setting

TENTATIVE RULING #16: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, 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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17. 23CV0581 PEOPLE OF THE STATE OF CALIFORNIA v. $31,939.97 IN US CURRENCY

Petition Hearing

The unverified petition contends: $31,939.97 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

A proof of service was sent by registered mail to an interested party on April 14, 2023. On October 23, 2023, service of notice of this hearing was delivered to an interested party by U.S. mail and proof of service was filed with the court.

Proof of publication was filed with the court on July 5, 2023.

TENTATIVE RULING #17: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, NOVEMBER 17, 2023, 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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