

**1. 22CV1554 VEGA v. VEGA**

**Motion for Coordination and Transfer**

Defendant/Cross-Complainant moves for transfer of a case filed in Monterey County to El Dorado County and coordination with the present action because El Dorado County “is the only proper venue” for the determination of a central issue in both cases, namely the ownership of certain real property located in El Dorado County.

The parties claim an interest as co-owners of a parcel of real estate located in El Dorado County as tenants in common. Both parties reside in Monterey County, and a related action is pending in Monterey County Superior Court (Case No. 22CV001866) that was filed on June 30, 2022, before this El Dorado County Superior Court case was filed on October 17, 2022.

The ongoing proceedings in Monterey County Superior Court, include a jury trial scheduled for March 11, 2024, to try causes of action including breach of contract, breach of fiduciary duty, elder abuse and common counts (related to failure to pay property expenses). The court grants both parties’ requests for judicial notice of the Monterey County action and the pleadings filed in that case. Evidence Code §§ 452(c), 453. In El Dorado County there is a pending action for partition of the property and a Cross-Complaint for quiet title or, alternatively, equitable set-off in the partition action.

Code of Civil Procedure § 403 provides:

A judge may, on motion, transfer an action or actions from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action and on each court in which an action is pending. Any party to that action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.

Code of Civil Procedure § 404.1 provides:

Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of

counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.

California Rules of Court, Rule 3.543 further provides:

(a) Court may transfer coordinated action

The coordination trial judge may order any coordinated action or severable claim in that action transferred from the court in which it is pending to another court for a specified purpose or for all purposes. Transfer may be made by the court on its own motion or on the motion of any party to any coordinated action.

(b) Hearing on motion to transfer

If a party objects to the transfer, the court must hold a hearing on at least 10 days' written notice served on all parties to that action. At any hearing to determine whether an action or claim should be transferred, the court must consider the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient use of judicial facilities and resources; the calendar of the courts; and any other relevant matter.

Defendant/Cross-Complainant asserts that the transfer would be convenient to the parties and witnesses because there would be fewer court appearances required. However, Plaintiff/Cross-Defendant's Opposition to the motion and supporting Declaration of Tracy Tumlin, ("Tumlin Declaration") states that ten witnesses anticipated to testify in the Monterey County case live and work in Monterey County, which is a three-and-a-half-hour drive from El Dorado County. Counsel for Plaintiff/Cross-Defendant are also based in Monterey County and would incur travel and lodging expenses that would be billable to their client if the case was heard in El Dorado County. Only the attorney for Defendant/Cross-Complainant, who filed the motion, is located near El Dorado County.

The moving party who filed this motion to consolidate, the Defendant/Cross-Complainant in the El Dorado County action, is also the Plaintiff in the Monterey County action, and he chose that venue when he filed his Complaint in Monterey County.

The issue of law and fact all revolve around a dispute related to a particular piece of real estate in El Dorado County, but that is the only common factor. In El Dorado County there is pending an action involving quiet title and partition, while the Monterey County action relates to competing contract claims and claims of elder abuse.

The court finds that the coordination and transfer would not be an efficient utilization of judicial facilities and would not promote the ends of justice as there is no predominating common issue of fact or law and granting the motion would be inconvenient to the parties, witnesses and counsel.

Plaintiff/Cross-Defendant requests sanctions to recoup at least three hours of attorney's fees incurred opposing the motion. The court reserves on the issues of fees to the time to trial.

**TENTATIVE RULING #1: THE MOTION IS DENIED. THE REQUEST FOR ATTORNEY'S FEES AS A SANCTION IS RESERVED TO THE TIME OF TRIAL.**

**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. PC20210551 McGAGIN v. BLACK OAK LAND HOLDINGS, LLC**

**Motion to Strike**

On September 5, 2023, the court entered an Order granting Defendants' motion for Summary Judgment. Defendant filed a Memorandum of Costs on September 14, 2023.

Plaintiff has filed a motion to strike and/or tax costs as improper and irrelevant costs and/or excessive fees and costs that should be stricken. The motion was filed in accordance with the procedural requirements of California Rules of Court, Rule 3.1700(b).

Plaintiff takes issue with the memorandum of costs on the grounds that there are no supporting bills, invoices statements or other documents in support of the claimed expenses, such that Plaintiff has no way of knowing whether they were reasonably necessary to the litigation, and that they are vague, such that Plaintiff cannot know with certainty what expenses are claimed and if those expenses are recoverable.

Specifically, the motion challenges the following costs:

- 1) Items 1b-1k: The total claim for these costs was in the amount of \$1,685.95. Plaintiff requests these filing and motion fees to be taxed in the amount of \$1,050.95;
  - a) Plaintiff claims that apart from \$135 filing fee to file an Answer and the \$500 filing fee to file the motion for summary judgment, the remaining costs claimed under this item are not authorized by statute. These include remote appearance fees, case management fees, reply briefs, and notice of change of address (Items 1b-1j).
  - b) Further, that the \$880.30 amount claimed for filing the notice of motion for summary judgment and memorandum of points and authorities is unjustified given the posted fee of \$500 for summary judgment motions and \$60 for motions generally.
  - c) In response, Defendant has filed a Declaration of Christopher M. Egan in Support of Defendants' Opposition (Egan Declaration), which attaches invoices for these costs as Exhibits A-E, all of which involved the use of a service for the filing of documents with the court related to the litigation. These invoices show additional fees charged by the filing service based on the number of pages to be filed, wait times, check charges, and transaction fees.
- 2) Items 4a-4d: deposition costs to be taxed in their entirety in the amount of \$2,2265.17 in the absence of further proof;
  - a) Plaintiff does not contest this cost provided that Defendant can support the amount of the claimed expense. Defendant filed receipts for these costs (Egan Declaration, Exhibits G, H and I) and Plaintiff no longer takes issue with these costs in her Reply.
- 3) Items 5a-5u: Service of process costs to be taxed in their entirety in the amount of \$2,187.98;

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- a) Plaintiff argues that amounts claimed for obtaining and copying Plaintiff's medical records and workers compensation insurance files do not come within "service of process" and are not otherwise recoverable expenses. Further that they were not necessary to the litigation, which was resolved on a point of law.
  - b) Defendant responds that these expenses were necessary to evaluate the case and determine the status of Plaintiff's workers compensation claim. Defendant has filed a Declaration with documentation supporting these expenses (Egan Declaration, Exhibit F).
- 4) Item 14: Fees for electronic filing or service to be taxed in their entirety in the amount of \$232.80 absent further proof.
- a) Plaintiff argues that these costs are not explained absent some further showing of proof by Defendant.

Defendant's Opposition to the motion responds with citations to subsections of Code of Civil Procedure § 1032, presumably referring to § 1033.5 which lists "Items Allowable as Costs", as follows:

- 1) Subsection (a)(1) authorizes recovery for costs associated with filing, motion and jury fees;
- 2) Subsection (a)(3)(A) authorizes recovery for costs associated with taking, video recording and transcribing necessary depositions;
- 3) Subsection (a)(4)(B) authorizes recovery for costs associated with service by a registered process server;
- 4) Subsection (a)(11) authorizes recovery for costs associated with court reporter fees;
- 5) Subsection (a)(14) authorizes recovery for costs associated with electronic filing or service of documents.

Defendant further argues that California Rules of Court, Rule 3.1700 provides that the filing of a memorandum of costs is *prima facie* evidence of their propriety, and does not require the filing of receipts or other supporting documentation. The burden is on the part seeking to tax costs to show that they are not reasonable or necessary. 612 S. LLC v. Laconic Ltd. P'ship, 184 Cal. App. 4th 1270, 1285 (2010).

Plaintiff counters that, with an objection to Plaintiffs costs having been filed, the burden has shifted to Plaintiff to justify those costs: "[I]f the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Ladas v. California State Auto. Assn., 19 Cal. App. 4th 761, 774 (1993).

Code of Civil Procedure § 1033.5(c) provides, in pertinent part:

- (c) An award of costs shall be subject to the following:
  - (1) Costs are allowable if incurred, whether or not paid.

- (2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.
- (3) Allowable costs shall be reasonable in amount.
- (4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

Code of Civil Procedure § 1033.5(c)(4) further provides that “Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.”

The court finds that:

- 1) Items 1b-1k: The court allows the remote appearance fee of \$94 as necessary to the conduct of the litigation. The court allows \$635 of filing fees pursuant to § 1033.5(a)(1). As to additional costs claimed under this item, Plaintiff's motion is granted.
- 2) As to Items 5a-5u, for the subpoena of Plaintiff's medical records and workers compensation files the Plaintiff's motion is granted. These costs are mischaracterized as “service of process” under 1033.5(a)(4)(B) and are more properly described as within the definition of “investigation expenses in preparing the case for trial” which are expressly disallowed under § 1035.5(b)(2).
- 3) As to Item 14, the court accepts but does not require electronic filing, and so § 1035.5(a)(14) does not authorize recovery of such costs.

**TENTATIVE RULING #2:**

- (1) PLAINTIFF'S MOTION IS GRANTED WITH RESPECT TO ITEMS 1B-1K EXCEPT THAT REMOTE APPEARANCE FEES FOR \$94 SHALL BE ALLOWED.**
- (2) PLAINTIFF'S MOTION IS GRANTED WITH RESPECT TO ITEMS 5A-5U.**
- (3) PLAINTIFF'S MOTION IS GRANTED WITH RESPECT TO ITEM 14.**

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**COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

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**3. PC20200117 MARTINEZ-MEDINA v. EL DORADO TRANSIT AUTHORITY**

**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 communication and the attorney-client relationship have broken down.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Plaintiff at her last known address and on counsel for Defendants was filed on October 23, 2023.

A Case Management Conference is currently scheduled for the case on December 18, 2023, and that hearing is noted in Declaration supporting the motion.

**TENTATIVE RULING # 3: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e). ORDER IS EFFECTIVE UPON FILING OF PROOF OF SERVICE SHOWING SERVICE OF THE ORDER ON THE CLIENT.**

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**4. PC20200518 AIDNIK-FERRARA v. AIDNIK**

**Attorney's Fees**

On September 5, 2023, following a trial conducted on July 25-26, 2023, judgment was entered by the court finding Defendant/Cross-Complainant Aileen Aidnik to be the prevailing party in the case entitled to costs incurred in the action upon application to the court. The Judgment at ¶4 included the finding that Aileen Aidnik is entitled to attorney's fees under Welfare and Institutions Code § 15675.5 in relation to a judgment in the amount of \$30,000 for violations of that statute. The total judgment was in the amount of \$168,975, including the Welfare and Institutions Code violation. The other causes of action on which Defendant/Cross-Complainant prevailed and was awarded money damages were for breach of contract, conversion, breach of the covenant of quiet enjoyment, and wrongful eviction.

On September 15, 2023, Defendant/Cross-Complainant filed a motion for attorney's fees pursuant to Welfare and Institutions Code § 15675.5 and a memorandum of costs in the amount of \$2,257.04, and filed an amended motion on September 29, 2023.

The Declaration of Todd A. Murray, dated September 11, 2023, in support of the motion declares that a total of 88.35 hours had been expended in the matter since January, 2018, resulting in attorney's fees of \$28,650, which included 79 attorney hours at a rate of \$350,00 per hour (\$27,650), 6.85 paralegal hours at a rate of \$125 per hour (\$856.25), and 2.5 admin hours at the rate of \$50 per hour (\$125). The court finds these hourly rates to be reasonable.

Welfare and Institutions Code § 15675.5 provides:

(a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

\* \* \*

(e) Any money judgment in an action under this section shall include a statement that the damages are awarded based on a claim for financial abuse of an elder or dependent adult, as defined in Section 15610.30. If only part of the judgment is based on that claim, the judgment shall specify what amount was awarded on that basis.

The motion is unopposed.

**TENTATIVE RULING #4: THE MOTION IS GRANTED.**

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

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5. **23CV0039 FRITZ v. PERDICHIZZI**

**Attorney Withdrawal**

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

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there was an initial error in determining that the Defendant Lisa Perdichizzi was covered by her former landlord's insurance policy that provided for legal defense. When it was determined that there was no insurance coverage available to Defendant Perdichizzi under the homeowner's policy of her former landlord, Perdichizzi was notified by a letter dated September 28, 2023. When Lisa Perdichizzi declined to execute a substitution of attorney, the attorney brought this motion to be relieved as counsel on the grounds that the attorney would not be compensated for legal services. The Defendant Donna Aguiar will continue to be represented by the Law Offices of Melanie D. Johnson.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff was filed on October 3, 2023.

A Trial Setting Conference is scheduled for March 11, 2024. The motion erroneously lists that date as October 16, 2023, because that date was continued after the motion was filed.

**TENTATIVE RULING #5: THE MATTER IS CONTINUED TO 8:35 A.M. ON DECEMBER 22, 2023, IN DEPARTMENT NINE TO ALLOW COUNSEL AN OPPORTUNITY TO FILE AN AMENDED ORDER (FORM MC-053) SPECIFYING THE MARCH 11, 2024 TRIAL SETTING CONERENCE DATE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).**

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**6. PFL20200050 SCHNEIDER v. SCHNEIDER**

- 1) Child Custody Recommended Counselling Review**
- 2) RFO/OSC Hearing - Sanctions**

**TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 8, 2023 IN DEPARTMENT NINE.**

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**7. 23CV0070 MANTLE GROUP, INC. v. MCLAFLIN**

- (1) Demurrer**
- (2) Demurrer**
- (2) Sanctions**

**TENTATIVE RULING #8: THIS MATTER IS CONTINUED TO 8:31 A.M. ON FRIDAY, FEBRUARY 16, 2024, IN DEPARTMENT NINE.**

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**8. 23CV0781 SOTO v. FAY SERVICING, LLC, ET AL**

**(1) Demurrer**

**(2) Motion to Strike**

Plaintiffs took out a mortgage for a residential real property (“Property”) as joint tenants in 2013. Defendants, through a series of assignments of the Deed of Trust (see Request for Judicial Notice Exhibits 1-5) are the loan servicer (Fay Servicing, LLC) and the holder (US Bank Trust) of the mortgage loan. On March 9, 2022, a Notice of Default was recorded. Request for Judicial Notice Exhibit 7. On June 13, 2022, a Notice of Trustee’s Sale was recorded. Request for Judicial Notice Exhibit 8.

Beginning in July, 2022, Plaintiffs were in communication with Fay Servicing about a loan modification. FAC ¶21. In accordance with the conditions of a trial period plan (“TPP”) that Fay Services established as a prerequisite to the approval of a permanent loan modification, Plaintiffs made monthly payments between September, 2022 and March, 2023. FAC ¶ 21-28, 31-33, 35; FAC Exhibit I. In the meantime, the trustee sale date was continued. By February, 2023, Fay Services provided a loan modification agreement but Plaintiffs did not execute, the stated reason being that they were unable to notarize the document until Michelle Soto received her drivers’ license for the purpose of providing identification to the notary. FAC ¶¶ 34-35; Plaintiffs’ Opposition to Demurrer at 2:12-19.

Plaintiffs explain that that they attempted to communicate to Fay Services that there would be a delay in obtaining the identification that would be required to notarize the document due to procedures required by the Department of Motor Vehicles and the Social Security Administration, but that Defendants proceeded with the sale even though Plaintiffs had made the modified payments every month during the duration of the TPP with the intention of executing the document as soon as they were legally able to do so.

The Property was sold at the trustee sale on April 27, 2023, and a Trustee’s Deed was recorded on July 13, 2023. Request for Judicial Notice Exhibit 9.

The Complaint was filed on May 22, 2023, and the FAC was filed on August 2, 2023.<sup>1</sup>

Request for Judicial Notice

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<sup>1</sup> Plaintiffs proposed to file an amendment to the Complaint, and the parties entered into a Stipulation and Order that the FAC would be filed no later than July 24, 2023. However, the FAC was filed on August 2 2023, and Defendants’ argue that it is within the courts’ power to dismiss the FAC for failure to comply with that Order apart from the merits of Defendants’ motions. Given that the Defendants have raised extensive substantive issues in their demurrer the court declines to dismiss the matter on this technicality.



Defendants request the court to take judicial notice of certain documents that have been recorded in the Official Records of the County of El Dorado. These documents constitute “official acts of the legislative, executive and judicial departments of the United States and of any state of the United States” and as such, are appropriately subject to judicial notice. Evidence Code § 452(c).

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. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy” Evidence Code § 452(h).

A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendants’ request for judicial notice is granted. However, “[w]hile the *existence* of a document, such as a document recorded in the official records of a government body, may be judicially noticeable, the truth of statements contained in the document and *their proper interpretation* are not subject to judicial notice. [Citation].” Tenet Health System Desert, Inc. v. Blue Cross of California, 245 Cal. App. 4<sup>th</sup> 821 (2016) (emphasis original).

### Demurrer

Defendants US Bank Trust and Fay Servicing have filed a demurrer to the First (Violation of Civil Code § 2923.5), Second (Violation of Civil Code § 2924.9), Fourth (Breach of Contract), Fifth (Negligence), Sixth (Breach of Implied Covenant of Good Faith and Fair Dealing), Seventh (Promissory Estoppel) and Tenth (Cancellation of Written Instrument – Civil Code § 3412) Causes of Action in the First Amended Complaint (“FAC”).

### Standard of Review

A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra*, 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra*, 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.)

The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp.*, *supra*, 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

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

First Cause of Action (Civil Code § 2923.5)

With respect to the First Cause of Action (FAC ¶¶50-54), the Complaint alleges that Defendants failed to contact Plaintiffs to explore options to avoid foreclosure prior to the March 9, 2022, recording a Notice of Default, in violation of Civil Code § 2923.5. The Notice of Default, attached to the Complaint as Exhibit G (see also Defendants' Request for Judicial Notice Exhibit 7) includes a Declaration of Compliance with this requirement, dated August 25, 2021, stating that the mortgage servicer has exercised due diligence to contact the borrower, that 30 days or more have passed since efforts to contact the borrowers were made, and that the mortgage servicer did not receive or deny a forbearance request between August 31, 2020 through September 1, 2021.

For the purpose of this motion Defendant recognizes that the court must accept the Plaintiffs' allegation that there was a violation of Civil Code § 2923.5 leading up to the March, 2022, Notice of Default. Although there was a Declaration alleging compliance, *i.e.* that Fay Services attempted to contact the Plaintiffs prior to recording that Notice of Default, Plaintiffs allege that they received no such communication.

The pertinent provisions of Civil Code § 2923.5(a) provide as follows:

(a)(1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with paragraph (1) of subdivision (a) of Section 2924.18, if the borrower has provided a complete application as defined in subdivision (d) of Section 2924.18.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment

of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of “borrower” pursuant to subdivision (c) of Section 2920.5.

Defendants argue that that the violation, if any, leading up to the March, 2022 Notice of Default was later cured by the continuance of the trustee sale for nine months while the parties negotiated a loan between July, 2022 and February, 2023. Defendants cite the case of Billesbach v. Specialized Loan Servicing LLC, 63 Cal. App. 5th 830 (2021) as applicable precedent for the principle that an initial failure to communicate can be cured by subsequent loan modification negotiations. In that case, the court held that an initial violation of to Civil Code § 2923.55, a parallel statute to Civil Code § 2923.5<sup>2</sup>, was cured when the loan servicer subsequently negotiated a loan modification. “Following respondent's curative measures, any uncured violation relating to the premature recording of the notice of default caused appellant no meaningful harm and is therefore not actionable.” Billesbach v. Specialized Loan Servicing LLC, 63 Cal. App. 5th 830, 844, (2021).

Another framework for this analysis is case law addressing whether statutory violations are “material”. In Montes v. Wells Fargo Bank, N.A., 2017 WL 1093940 (E.D. Cal. Mar. 23, 2017) the court held violations of provisions of the California Homeowners Bill of Rights are not “material” where “borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options.” Montes at \*4. Defendants’ failure to communicate prior to recording a notice of default did not in itself lead to Plaintiffs’ alleged harm. *See also*, Cornejo v. Ocwen Loan Servicing, LLC, 151 F. Supp. 3d 1102, 1113 (E.D. Cal. 2015) (“Plaintiffs fail to explain how an earlier [communication] would have changed the course of the proceedings.”) Rather, it was the alleged conduct subsequent to the loan modification application process that resulted in the foreclosure in this case.

The court finds that these holdings are applicable with respect to the alleged absence of communication or due diligence prior to recording the March, 2022 Notice of Default in this case and grants the demurrer on this issue.

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<sup>2</sup> Civil Code § 2923.5 and Civil Code § 2923.55 have differing application and varying requirements regarding the substance of required communications, but both statutes require specified communications or attempted communications prior to recording a notice of default on a mortgage.

The issue of statutorily required communications is separate from the other allegations of the FAC, and the court notes that this holding on the First Cause of Action does not affect Plaintiffs' allegations contained within other causes of action. Defendants do not demur to the Third, Eight and Ninth Causes of Action for Violations of Civil Code § 2923.6 (dual tracking), wrongful foreclosure and unfair business practices.

Second Cause of Action (Civil Code § 2924.9)

The Second Cause of Action (FAC ¶¶ 55-59) asserts a violation of Civil Code § 2924.9, which also expresses a procedural communication requirement similar to the First Cause of Action:

- (a) Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Section 2923.6, within five business days after recording a notice of default pursuant to Section 2924, a mortgage servicer that offers one or more foreclosure prevention alternatives shall send a written communication to the borrower that includes all of the following information:
  - (1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives.
  - (2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.
  - (3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

Like the First Cause of Action, Defendants' apparent failure to comply with this requirement is cured by the subsequent engagement in negotiation with Plaintiffs over a loan modification which proceeded beyond the application stage. Accordingly, the demurrer to this cause of action is granted.

Fourth /Sixth Causes of Action (Breach of Contract/ Breach of Implied Covenant of Good Faith and Fair Dealing)

Defendants argue that the Fourth Cause of Action (FAC ¶¶66-80) and Sixth Cause of Action (FAC ¶¶89-96) are subject to demurrer because 1) they do not allege the existence of a contract between Defendant US Bank Trust, and 2) that as to Fay Servicing, the FAC does not allege the elements of a breach of contract: 1) the existence of a contract, 2) Plaintiffs' performance, 3) Defendants' breach and 4) Plaintiffs' damages.

With respect to the identity of the Defendants, US Bank Trust acquired an interest in Plaintiffs' mortgage loan on January 8, 2020 and held that interest at the time of Fay Services' contacts with Plaintiffs to renegotiate that loan. FAC Exhibit F; Request for Judicial Notice Exhibit 5. US Bank Trust as the lender has privity with Fay Services as the loan servicer and is

the beneficiary of any TPP and the recipient of Plaintiffs' payments towards the loan entered into with the borrower. As such, US Bank Trust is not a legal stranger to the transactions at issue. Although Fay Servicing was the primary point of contact for the residential borrower it was at all times acting as an agent of US Bank Trust.

“It is a settled rule of the law of agency that a principal is responsible to third persons for the ordinary contracts and obligations of his agent with third persons made in the course of the business of the agency and within the scope of the agent's powers as such, although made in the name of the agent and not purporting to be other than his own personal obligation or contract.’ ”

Daniels v. Select Portfolio Servicing, Inc., 246 Cal. App. 4th 1150, 1178 (2016), (citations omitted).

As to the elements of a breach of contract claim, the FAC alleges that the parties entered into a TPP with the understanding that if Plaintiffs abided by its terms they would be able to enter into a permanent loan modification. Plaintiffs provided required documentation and made monthly payments as consideration for and in reliance upon that agreement. Plaintiffs allege that they performed and that Fay Servicing breached that agreement by selling the property at a foreclosure sale instead of entering into a loan modification agreement. Plaintiffs allege that this conduct proximately caused Plaintiff damages. FAC ¶¶66-80.

Defendants further argue that 1) the statute of frauds requires the TPP to be in writing to be enforceable, 2) that the Plaintiffs' initial non-payment that led to the notice of default constitute non-performance on the part of the Plaintiff that bars a breach of contract action or a claim for violation of the implied covenant of good faith and fair dealing, and 3) that the TPP lacked consideration.

The statute of frauds does not bar a breach of contract claim because the TPP was an agreement that was to be performed in less than a year. Civil Code § 1624(a)(1); FAC ¶¶26. Further, under the circumstances of this case the statute of frauds may be overcome by estoppel, as is asserted in the FAC's Seventh Cause of Action:

[E]quitable estoppel may preclude the use of a statute of frauds defense. (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1068, 60 Cal.Rptr.2d 908 (*Byrne* ).) “The doctrine of estoppel has been applied where an unconscionable injury would result from denying enforcement after one party has been induced to make a serious change of position in reliance on the contract or where unjust enrichment would result if a party who has received the benefits of the other's performance were allowed to invoke the statute.’ ” (*Redke v. Silvertrust* (1971) 6 Cal.3d 94, 101, 98 Cal.Rptr. 293, 490 P.2d 805.)

Chavez v. Indymac Mortg. Servs., 219 Cal. App. 4th 1052, 1058 (2013). *See also*, Secrest v. Sec. Nat'l Mortg. Loan Tr. 2002-2, 167 Cal. App. 4th 544, 556 (2008); Corvello v. Wells Fargo Bank, NA, 728 F.3d 878, 885 (9th Cir. 2013).

With respect to Defendant's argument that Plaintiffs cannot sustain a cause of action for breach of contract or for a violation of the implied covenant of good faith and fair dealing because Plaintiffs defaulted on the underlying mortgage loan, the court notes that these are two distinct agreements. Plaintiffs are suing for breach of the TPP agreement to enter into a loan modification, not for breach of the terms of the underlying mortgage. Bushell v. JPMorgan Chase Bank, N.A., 220 Cal. App. 4th 915, 928 (2013) (rejecting argument that alleged contract damages for breach of the TPP agreement should be rejected because they represented loan payments that were already required under the terms of the mortgage).

Finally, Defendant argues that there was no consideration for the contract. To the contrary, the FAC at ¶¶70-71 alleges the existence of consideration, including detriment or prejudice to the Plaintiffs, such has been recognized as adequate in other cases. Civil Code § 1605; West v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 780, 786 (2013); Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547, 564 (7th Cir. 2012).

Defendants' demurrer to the Fourth and Sixth Causes of Action is overruled.

#### Fifth Cause of Action (Negligence)

The court finds that on this issue the recent opinion of the California Supreme Court is controlling. In that case, as in this one, it was alleged that the failure to enter into a loan modification constituted negligence on the part of the lender. The California Supreme Court undertook to resolve a split of authorities among the appellate decisions regarding the existence of a tort duty of care in mortgage modification cases and rejected that argument. The Court sustained a demurrer to a negligence cause of action in that case based on the "economic loss rule", concluding that "there is no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties" Sheen v. Wells Fargo Bank, N.A., 12 Cal. 5th 905, 923, 505 P.3d 625, 633 (2022).

The demurrer to the Fifth Cause of Action is sustained.

#### Seventh Cause of Action (Promissory Estoppel)

Defendants argue that Plaintiffs have not stated a claim for promissory estoppel. FAC ¶¶97-110.

The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the

promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310, 96 Cal.Rptr.2d 747, 1 P.3d 63; see Rest.2d Contracts, § 90, subd. (1).)

West v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 780, 803 (2013).

Defendants argue that Plaintiffs have not plead any promise made by Defendants, let alone a clear and unambiguous promise as is required to support this cause of action. The FAC alleges that “[t]he promises made by Defendant FAY to Plaintiff are clear and unambiguous in its [sic] terms”. FAC ¶ 104. While this allegation amounts to a conclusory statement that alleged promises meet the legal standard, more specificity is required to support the cause of action.

“[A] promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice....” [Citation.] The promise must, in addition, be “clear and unambiguous in its terms.” [Citation.]” (*Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044, 107 Cal.Rptr.3d 683.) For a promise to be enforceable, it need only be “definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages.” [Citations.]” (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209, 45 Cal.Rptr.3d 692.)

West v. JPMorgan Chase Bank, N.A. at 803-804.

FAC ¶ 26 alleges that “FAY gave Plaintiff a TPP that was to result in a permanent modification in March 2023.” FAC ¶ 34 states: “[Plaintiff] was told that it would be fine, FAY would not sell the house, without telling Plaintiffs beforehand.” FAC ¶37 states: “FAY kept telling PLAINTIFF that they were working on it, and PLAINTIFF was told to continue making payments.” These allegations are sufficient for the court to determine the scope of the promise that the Plaintiffs seek to enforce: that the Plaintiffs home would not be foreclosed without giving them an opportunity to enter into a permanent loan modification if they complied with the terms of the TPP. Whether the Defendants failed to give an adequate opportunity to execute the loan modification, or whether Plaintiffs failed to execute a loan modification that was offered is a factual issue that is premature to determine on this preliminary motion.

Defendants further argue that Plaintiffs failed to allege reliance on the alleged promises. In the West case, the court found sufficient detrimental reliance in the Plaintiffs’ statement that “if she had known Chase Bank would not offer her a permanent loan modification, ‘she would have pursued other options, including possibly selling her home, retaining counsel earlier,

and/or finding a co-signer to save her home.” West at 805. In this case, the FAC alleges actions in making continuing payments and waiting for the outcome of the loan modification process, and forbearance to take actions, such as not pursuing other loss mitigation options. FAC ¶¶ 100-101, 105-106, 109.

Defendants’ demurrer on the Seventh Cause of Action is overruled.

Tenth Cause of Action (Cancellation of Written Instrument – Civil Code § 3412)

The FAC alleges that the Notice of Default and the Notice of Trustee’s Sale related to the foreclosure of the Property (see FAC Exhibits G & H; Request for Judicial Notice Exhibits 8 & 9) are void *ab initio* or voidable pursuant to Civil Code § 3412, which provides:

A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Plaintiff argues that the Notice of Default is void or voidable because of violations of Civil Code §§ 2923.5, 2924(a)(1), 2934a(a)(1), 2924a(e), 2924.9 and 2924.11. Plaintiffs do not specify the details of the alleged violations of these statutes.

As to Sections 2923.5 and 2924.9, the court has found that the alleged violations have been cured by subsequent communications. Section 2924(a)(1) simply requires a notice of default to be filed prior to a foreclosure sale. Section 2934a(a)(1) governs the procedures for substituting a trustee under a trust deed on real property. Defendants point out that a substitution of trustee was recorded prior to the recordation of the Notice of Default in compliance with that statute (Request for Judicial Notice, Exhibits 6&7). Civil Code Section 2924.11 prohibits a notice of default from being recorded if:

- (1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.
- (2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

In this case Plaintiffs have alleged the existence of a written TPP and that the Plaintiffs were in compliance with its terms. FAC ¶67. However, the Notice of Default was recorded prior to the initiation of loan modification negotiations that led to that TPP and so the conditions listed in Section 2924.11 did not exist at the time it was recorded. Therefore, even taking the allegations of the FAC as true, and excepting alleged violations of Civil Code §§ 2923.5 and 2924.9 regarding which Defendants’ demurrer has been sustained, there are no statutory grounds to find the Notice of Default or Notice of Trustee Sale to be void or voidable under Civil Code § 3412.



Motion to Strike

Defendants argue that Plaintiffs have not sufficiently plead facts that would support punitive damages and move to strike FAC ¶ 118, FAC ¶128, FAC Prayer for Relief ¶ 8 pursuant to Code of Civil Procedure § 436:

The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:

- (a) Strikeout any irrelevant, false, or improper matter inserted in any pleading.
- (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

The motion argues 1) that punitive damages are not an available remedy under the Unfair Competition Law that is the basis for Plaintiffs' Ninth Cause of Action, and 2) that the allegations of the FAC do not support a finding of "fraud, oppression or malice" as is required to support punitive damages.

Plaintiffs respond that the pleadings should be liberally construed, Code of Civil Procedure § 452, and that any errors or defects should be disregarded unless they affect substantial rights of the Defendants. Code of Civil Procedure § 475.

The court finds that the FAC does not sufficiently allege facts showing "fraud, oppression or malice", and that absent such allegations, the inclusion of claims for punitive damages does in fact affect substantial rights of the Defendants. Accordingly, the Defendant's motion is granted, with leave to amend.

**TENTATIVE RULING #8:**

**(1) DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**

**(2) DEFENDANTS' DEMURRER:**

- a. **IS SUSTAINED WITH RESPECT TO THE FIRST AND SECOND CAUSES OF ACTION WITHOUT LEAVE TO AMEND.**
- b. **IS OVERRULED WITH RESPECT TO THE FOURTH AND SIXTH CAUSES OF ACTION.**
- c. **IS SUSTAINED WITH RESPECT TO THE FIFTH CAUSE OF ACTION WITHOUT LEAVE TO AMEND.**
- d. **IS OVERRULED WITH RESPECT TO THE SEVENTH CAUSE OF ACTION.**
- e. **IS SUSTAINED WITH RESPECT TO THE TENTH CAUSE OF ACTION WITH LEAVE TO AMEND.**

**(3) DEFENDANTS' MOTION TO STRIKE IS GRANTED 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.**

**9. 23CV0026 MCINTIRE v. COUNTY OF EL DORADO**  
**Attorney Withdrawal**

**TENTATIVE RULING #9: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).**

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

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**10. 23CV0120 NAME CHANGE OF KEYT**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name and Order to Show Cause on January 18, 2023. The matter has been continued to allow Petitioner to file proof of publication and a background check with the court.

A background check was filed with the court on August 22, 2023, as required by Cal. Code of Civil Procedure § 1279.5(f).

Petitioner is required to publish the OSC in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a), with proof of publication to be filed with the court.

**TENTATIVE RULING #10: THE MATTER IS CONTINUED TO 8:35 A.M. ON FRIDAY, JANUARY 26, 2023, TO ALLOW PETITIONER AN OPPORUTNITY TO FILE PROOF OF PUBLICATION WITH THE COURT.**

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

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

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

11. 22CV0482 PEOPLE v. MACEIUNAS

Petition for Forfeiture

**TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:35 A.M. ON FRIDAY, DECEMBER 8, 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).**

**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.**

**12. PCL20210332 PEOPLE OF THE STATE OF CALIFORNIA v. KELLY**

**Claim Opposing Forfeiture**

**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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