1. 22CV1379 GONZALEZ v. GENERAL MOTORS, LLC

Motion to Compel Discovery - Sanctions

In this third hearing on the same Request for Production of Documents discovery request, Plaintiff has filed a second motion to compel seeking compliance with the court's June 30, 2023, Order and requests enforcement of existing monetary sanctions and the award of additional monetary sanctions. Specifically, Plaintiff asserts that:

1) Defendant has not fully complied with the court's order granting the prior motion to compel in its supplemental response and has not responded to Plaintiff's meet and confer efforts.
   a) Defendant's response was not Code-complaint because it failed to specify whether documents that were not produced never existed, have been destroyed, lost, misplaced, or stolen, or have never been, or are no longer, in the possession, custody, or control of Defendant. (Code of Civil Procedure § 2031.230)
   b) Defendant's response does not contain any of the requested engineering emails or engineering work orders.
   c) Defendant's response includes lists of documents without including the listed documents (engineering work orders; problem, resolution and tracking system documents, safety investigation listings)
   d) Provided Technical Service Bulletins do not include the engineering emails, engineering memos or failure rate charts that led to the creation of the Technical Service Bulletins.
   e) Defendant's responses included root cause analysis documents that did not pertain to defects alleged by Plaintiff.
   f) Root cause analysis documents for defects alleged by Plaintiff (blue infotainment screen after shifting to reverse, PRTS Issue No. 2042396 re: engine chirp noise) did not include engineering emails to show data that was used by engineers to compile the root cause analysis memos.
2) Following the hearings held on May 19, 2023, and June 30, 2023, the court ordered Defendant to pay sanctions in the amount of $4,500, and those sanctions have not yet been paid.
3) Plaintiff requests additional monetary sanctions in the amount of $4,169.40 to reimburse the costs of drafting the August 28, 2023, meet and confer letter, this motion, the Reply to Defendant's Opposition and the cost of attending the hearing on the motion.

Defendant's supplemental responses to Request for Production No. 16, 19, 20, 21, 22, 25, 26, 27, 39, 51, dated July 31, 2023, indicates that all responsive documents in Defendant's control have been produced. Plaintiff's August 28, 2023, response to that supplemental production conceded that the supplemental response had fully satisfied the Request for Production No. 51.

To Quote Plaintiff's August 28, 2023, letter:

However, the remaining supplemental responses are still not Code-compliant and the document production is incomplete. Specifically, every one of GM's Court-ordered supplemental responses to Request Nos. 16, 19, 20, 21, 22, 25, 26, 27, and 39 state that "GM has complied in whole," yet qualifies this statement by listing bates-stamped documents. A statement that a party "complied in whole" is meant to be just that – that the party complied in whole, with full and complete production of documents – without any sort of limit to just the listed documents.

The category nos. 16, 19, 20, 21, 22, 25, 26, 27, and 39 all pertain to internal investigation and root cause analysis documents re. Plaintiff's specific symptoms detailed in his definitions for the subject "Electrical Defect" and "Powertrain Defect" in 2019 GMC Sierra 1500 vehicles.

Although GM provided individual TSBs, none of those TSBs included any engineering emails, engineering memos, or failure rate charts that led to the creation of said TSBs.

GM did provide some internal investigation and root cause analysis documents. However, the root cause analysis memos re. the center stack module, root cause analysis memo re. cannot synch contacts, PRTS Issue No. 1997408 re. PCV has a hose causing SES light to set, root cause analysis re. underhood harness chafe, root cause analysis re. engine wire harness chafing, root cause analysis re. power steering 100kph level fix assist, root cause analysis re. loss of steering assist, and PRTS Issue No. 2076388 re. idler gear walked during GMW17104 test, do not appear to apply to either one of Plaintiff's subject defects.

As for root cause analysis memo re. a blue infotainment screen after shifting to reverse, and PRTS Issue No. 2042396 re. engine chirp noise, that do apply to the described symptoms of the subject defects, no engineering emails were provided to show the data that was used by the engineers to compile the internal investigation documents or root cause analysis memo. For example, the root cause analysis memo re. a blue infotainment screen after shifting to reverse, identifies the following individuals as "Executive Chief Engineers," Richard Spina, Josh Tavel, and Brandon Vivian. Nevertheless, GM failed to produce any emails or other documents detailing how these individuals came to the "resolution" reflected in the root cause analysis document. As such, GM's supplemental document production still does not contain any of the requested, Courtordered engineering emails.

Additionally, GM had decided to include mere lists of "Engineering Work Orders," however failed to attach any of the actual work orders, which would be considered internal investigation documents.

GM also produced lists of documents such as "Problem, Resolution, and Tracking System" and "Safety Investigation Listings," but none of the actual listed documents.

In its Opposition to Plaintiff's first motion to compel the Defendant submitted irrelevant "authorities" from 2014 and 2017 Superior Court trial court proceedings in other jurisdictions. Declaration of Cameron Major dated May 5, 2023 ("Major Declaration"), Exhibit B. Defendant further attempted to support its arguments before this court with the five-year-old Declaration of Huizehn Lu, dated October 25th, 2018, addressing matters irrelevant to this case.[1] Major Declaration, Exhibit C. Defendant asserted objections to the discovery request based on confidentiality after failing to respond to Plaintiff's offer of a protective order. Declaration of Alessandro Manno, dated March 28, 2023, Exhibit 21-22. Defendant resisted compliance with discovery by arguing burdensomeness without any attempt to meet the clear requirement of articulating the asserted burden. *See,* W. Pico Furniture Co. of Los Angeles v. Superior Ct. In & For Los Angeles Cnty., 56 Cal. 2d 407 (1961); Deyo v. Kilbourne, 84 Cal.App.3d 771, 788-789; Coriell v. Superior Court, 39 Cal.App.3d 487, 492-493 (1974); Columbia Broadcast Sys. Inc. v. Superior Court, 263 Cal.App.2d 12, 19 (1968). Defendant asserted trade secret protections but failed to make any attempt to meet its burden to provide any information which would allow the court to consider its trade secret arguments. Agric. Lab Rels. Bd. V. Richard A. Glass Co., 175 Cal.App.3d 703 (1985); Bridgestone/Firestone, Inc. v. Superior Court, 7 Cal.App.4th 1384, 1393 (1992).

Defendant asserted that it could not ascertain the meaning of certain terms with respect to all but one of the disputed Requests (Requests Nos. 16 ["concerning", "internal analysis", "investigation", "powertrain defect"], 19 ["concerning", "customer complaints", "claims", "reported failures", "warranty claims", "related to", "electrical defect"], 20 ["concerning", "failure rates", "electrical defect"], 21 ["concerning", "relating to", "fixes", "electrical defect"], 22 ["concerning", "internal analysis", "investigation", "powertrain defect"], 25 ["concerning", "customer complaints", "claims", "reported failures", "warranty claims", "related to", "powertrain defect"], and 26 ["concerning", "failure rates", "electrical defect"], 27["concerning", "relating to", "fixes", "powertrain defect"]). However, Defendant failed to seek clarification of any of these terms through a meet and confer process.

Defendant has accused the Plaintiff of "attempting to abuse the discovery process . . . with no other objective than to extort a higher settlement by obtaining higher attorneys' fees". Defendant's May 8, 2023, Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel at p. 6. Defendant represents Plaintiff's attempt to achieve discovery responses as "abusive", "disingenuous", "unwarranted", "misleading and false", "completely groundless" and a "bad faith discovery tactic." Defendant's March 18, 2024, Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel at pp. 2-5. Defendant has additionally accused the Plaintiff of failing to meet in confer in good faith.

[1] This is not the only case before this court for which the inapplicable Lu Declaration has been recycled in support of Defendant's objections to discovery requests related to Song-Beverly Act claims.

In its tentative ruling dated May 19, 2023, the court clearly indicated its expectation that the parties make an effort to meet and confer in resolving this discovery dispute. On August 28, 2023, Plaintiff sent a meet and confer letter to Defendant raising the issues listed in this motion with respect to Defendant's supplemental responses. Plaintiff states that Defendant never responded to that letter. Defendant represents to this court that it did respond to Plaintiff's meet and confer letter on September 2, 2023, but provides no evidence that it did so, other than a reference in Defendant's supporting Declaration of Xylon Quezada, dated March 18, 2024 that cites Exhibit 4 to the Plaintiff's Declaration of Alessandro Manno, dated February 7, 2024, which exhibit does not exist.

Defendant now takes issue, in boldface, italics text, with the fact that Plaintiff has brought this subsequent motion "***almost six months later,***" with no apparent acknowledgement that it is Defendant who has required the filing of this subsequent motion by its refusal to comply with the court's prior Order, among other things, to pay sanctions that were awarded ***almost a year ago***. And yet Defendant represents to the court that it "is in full compliance with this Court's Order." Defendant's March 18, 2024, Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel at p. 3.

Code of Civil Procedure §2031.320 provides, in part:

> (b) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.
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> (c) Except as provided in subdivision (d), if a party then fails to obey an order compelling inspection, copying, testing, or sampling, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

TENTATIVE RULING #1: PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH THE COURT'S JUNE 30, 2023, ORDER IS GRANTED. PLAINTIFF'S REQUEST FOR ADDITIONAL MONETARY SANCTIONS IN THE AMOUNT OF $4,169.40 IS GRANTED. DEFENDANT IS ORDERED TO PRODUCE VERIFIED, CODE-COMPLIANT RESPONSES TO REQUEST FOR PRODUCTION, SET ONE, NOS. 16, 19, 20, 21, 22, 25, 26 AND 27 AND PAY $9,019.40 OF COURT-ORDERED SANCTIONS WITHIN TEN (10) CALENDAR DAYS OF THE DATE OF THIS ORDER. A REVIEW HEARING IS SET FOR 8:35A.M. ON FRIDAY, APRIL 26, 2024, TO DETERMINE WHETHER DEFENDANT HAS COMPLIED WITH THE COURT'S ORDERS, AND IF NOT, WHETHER ADDITIONAL SANCTIONS SHOULD BE IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE § 2031.320(C) AND THE

AUTHORITY ARTICULATED IN DOPPES V. BENTLEY MOTORS, INC., 174 CAL.APP.4TH 967, 992-996 (2009).

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

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

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

2. PC20210500 TYSON v. SUMMITVIEW CHILD & FAMILY SERVICES

Motion for Preliminary Approval of Class Action Settlement

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit A to Declaration of Mehrdad Bokhour, dated January 31, 2024.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$300,000
Attorney's Fees not to exceed one third of Gross Settlement Amount	$100,000
Litigation Costs (not to exceed)	$20,000
Administrator Costs (not to exceed)	$10,000
PAGA Payment to Labor Workforce Development Agency	$7,500
Plaintiff's Service Award (two named Plaintiffs)	$20,000
Net Settlement Amount:	$142,500

Individual Settlement Payments would be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. The average payment is estimated to be $250, with the highest payment estimated to be approximately $1,000. Class Members would not be required to submit claim forms, but each Class member would be mailed the Notice Packets containing information about his or share, the opportunity to dispute the number of Compensable Workweeks and the opportunity to opt out. All Class Members who do not opt out would receive a settlement check upon the court's final approval. Defendant will pay the employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages.

The Settlement Administrator will be responsible for mailing out notices to Class Members, making reasonable efforts to locate Class Members if the mailed notices are returned, managing the opt out process, calculating the payment amounts among participating Class Members, managing payments and issuing appropriate IRS forms. Class Members will execute releases of liability of Defendant as described in the Settlement Agreement.

Specifically, the parties request the court to issue an Order as follows:

1) For settlement purposes only, conditionally certifying the following Settlement Class: all current and former individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees under California law during the Class Period (i.e., September 14, 2017, until August 31, 2023).

2) Preliminarily appointing the named Plaintiffs, Karla Tyson and Jessica Raye Lucia, as the Class Representative and Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C., and Zack Domb of Domb Rauchwerger LLP as Class Counsel.

3) Preliminary approval of the proposed Settlement upon the terms and conditions set forth in the Settlement Agreement, with a finding on a preliminary basis that:

   a) The Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by the Court;
   b) That the Maximum Settlement Amount is fair, adequate, and reasonable as to all potential Class Members, when balanced against the probable outcome of further litigation relating to liability and damages issues;
   c) That extensive and costly investigation and research has been conducted such that counsel for the parties at this time are reasonably able to evaluate their respective positions;
   d) That the Settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the Action;
   e) That the Settlement has been reached as the result of intensive, non-collusive, arms-length negotiations utilizing an experienced mediator.

4) Approval, as to form and content, the proposed Notice Packet attached as Exhibit "A" to the Settlement Agreement.

5) Directing the mailing of the Notice Packet by first-class mail to the Class Members pursuant to the terms of the Settlement Agreement, and finding that the dissemination of the Notice Packet set forth in the Settlement Agreement complies with the requirements of due process of law and appears to be the best notice practicable under the circumstances.

6) Preliminary approval of the definition and disposition of the not-toexceed Gross Settlement Amount of $300,000, which is inclusive of the payment of attorneys' fees not to exceed $100,000, costs not to exceed $20,000, a Service Award not to exceed $10,000 to each named Plaintiff, a PAGA Payment of $10,000 (of which 75% or $7,500 will be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% or $2,500 will be paid to Settlement Class Members); Settlement Administration Costs not to exceed $10,000, and payment by Defendant of its share of payroll taxes on the portion of the Individual

Settlement Amounts to Participating Class Members that are allocated as wages subject to withholding.

7) Confirmation of the ILYM Group, Inc. as the Settlement Administrator, approval of the payment of Settlement Administration Costs, not to exceed $10,000, out of the Settlement Amount for services to be rendered by on behalf of the Class Members, and instruction to the Settlement Administrator to prepare and submit to Class Counsel and Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in the Settlement Agreement, including an explanation of efforts to resend any Notice Packet returned as undeliverable and the total number of opt-outs and objections received before and after the deadline.

8) Instructing the Defendant to work diligently and in good faith to compile from its records and provide the Settlement Administrator with the "Class Data" – as defined in paragraph 6 of the Settlement Agreement – for Settlement Class Members, in a format to be provided by the Settlement Administrator, which will consist of the following information: (1) the Class Members' full names; (2) last known addresses; (3) Social Security Numbers; (4) telephone numbers; and (5) dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member, and ordering the Defendant to provide the "Class Data" as referenced herein to the Settlement Administrator within fifteen (15) days after entry of the Preliminary Approval Order.

9) Instructing the Settlement Administrator to use the National Change of Address database (U.S. Postal Service) to check for updated addresses for Class Members and then to mail, via first class U.S. mail, the Notice Packet to Settlement Class Members.

10) Establishing the deadline by which Class Members may dispute the number of Workweeks Worked, opt-out or object to be forty-five (45) calendar days from the date of mailing of the Notice Packet; and directing that:

    a) Any Class Member who desires to be excluded from the Settlement must timely mail or fax his or her written Request for Exclusion in accordance with the Notice Packet;
    b) Requests for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion.
    c) The Request for Exclusion should state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SUMMITVIEW CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."
    d) All such persons who properly and timely exclude themselves from the Settlement shall not be Settlement Class Members and shall have no rights with respect to the Settlement, no interest in the Settlement proceeds, and no standing to object to the proposed Settlement.

11) Establishing the deadline for filing objections to any of the terms of the Settlement as fortyfive (45) calendar days from the date of mailing of the Notice Packet, and providing that:

    a) Any Class Member who wishes to object to the Settlement must serve a timely written objection on the Settlement Administrator, who will email a copy of the objection to Class Counsel and counsel for Defendant.
    b) Class Counsel will submit a copy of the objection to the Court.
    c) Any such objection shall include the full name, address, telephone number, last four digits of the social security number or date of birth, signature of the Objecting Settlement Class Member, and the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel.
    d) Any Class Member who fails to make his or her objection in the manner provided for in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to or appeal of the fairness, reasonableness or adequacy of the Settlement as incorporated in the Settlement Agreement, or to the award of Attorneys' Fees and Costs, or Service Award to the Class Representative.

12) Providing that

    a) Any Settlement Class Member who does not submit a timely and valid Request for Exclusion will be deemed a Participating Class Member and will be entitled to receive an Individual Settlement Amount based upon the allocation formula described in the Settlement Agreement;
    b) Settlement Class Members may not object to or opt-out of the Settlement with respect to the Release of the PAGA Claims.
    c) Settlement Class Members who opt out of the Release of Class Claims will still be paid their allocation of the PAGA Payment and will be bound by the Release of PAGA Claims regardless of whether they submit a timely and valid Request for exclusion from the Release of Class Claims.

13) Approving the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a result of a Participating Class Member's failure to timely cash a settlement check shall be handled by the Settlement Administrator and be issued to the State of California Unclaimed Property Fund, as set forth in the Settlement Agreement.

14) Setting a final approval hearing to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3) the amount of service award to the Class Representative.

Court approval of a class action settlement is governed by California Rules of Court, Rule 3.3769, as follows:

(a) Court approval after hearing

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) Attorney's fees

Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) Preliminary approval of settlement

Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) Order certifying provisional settlement class.

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(e) Order for final approval hearing

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) Notice to class of final approval hearing

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

(g) Conduct of final approval hearing

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) Judgment

If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.

TENTATIVE RULING #2: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 29, 2024, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

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

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

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

3. 23CV0070 MANTLE GROUP, INC. v. MCCLAFLIN

Motion to Enforce Terminating Sanctions

Plaintiff's Amended Complaint ("Complaint"), filed on June 14, 2023, includes causes of action for breach of contract, specific performance, intentional interference with contractual relations, breach of implied duty of good faith and fair dealing, and fraud.

On October 7, 2014, Plaintiff ("MGI") and Defendants McClaflin and Wilson ("Lessors") entered into a lease agreement to lease certain real property from a term beginning October 1, 2014 through September 30, 2019. Complaint, ¶14. Payment for the lease term in the amount of $25,000 was due in two installments: $10,000 upon execution of the lease, and $15,000 on or before April 1, 2015. Complaint, ¶ 15, Exhibit 2, Section 3.1. The lease also contained an option to purchase. Complaint, ¶¶13, 16; Complaint Exhibit 2, Section 9. Written notice of MGI's intention to exercise the purchase option was due on or before September 30, 2019. Complaint ¶17; Complaint, Exhibit 2, Section 9.1.

On September 29, 2017, MGI's corporate status was suspended by the Secretary of State and remained suspended until November 14, 2022. Complaint ¶2. On November 1, 2017, MGI was suspended by the Franchise Tax Board, and remained suspended until May 11, 2022. Under Revenue and Taxation Code § 23302, this resulted in the suspension of the corporation's powers, rights and privileges; during that suspension period the corporation "shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension." Revenue and Taxation Code § 23302(d). The corporation was simultaneously prevented from exercising any "corporate powers, rights, and privileges" as a result of its suspension by the Secretary of State. Corporations Code § 2205.

MGI alleges in the Complaint that it exercised the purchase option on September 21, 2019, Complaint, ¶21, and that Defendants breached the lease by failing to sell the property to MGI. Complaint, ¶¶36-43. Instead, the property was sold to Defendant Pacific Power Partners ("Pacific"). Complaint ¶13, 32. The Grant Deed of that sale was executed by McClaflin on May 19, 2021, and was recorded on May 27, 2021. Complaint, Exhibit 1.

Defendant McClaflin ("McClaflin") argues that the Defendants fully performed the purchase option covenant by refraining from selling the property until after the expiration of the lease term. McClaflin argues that no purchase agreement did or could exist until the purchase option was exercised because MGI as a corporate entity was suspended and had no power to exercise an option or enter into a new contract at that time.

Requests for Judicial Notice

Pacific filed a request for judicial notice of the business records of the Secretary of State's Office regarding MGI's corporate status indicating suspension of MGI by the Secretary of State as of September 29, 2017, and by the Franchise Tax Board as of November 1, 2017, and the reinstatement of MGI by the Franchise Tax Board on May 11, 2022, and by the Secretary of State as of December 8, 2022.

MGI has also filed a request for judicial notice with respect to pleadings filed in this case.

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." Evidence Code § 452(d). Evidence Code § 452(c) allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state 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, the parties' requests for judicial notice are granted.

<u>Motion for Terminating and Monetary Sanctions</u>

Pacific has moved for terminating sanctions under Code of Civil Procedure § 128.7, which provides, in pertinent part:

> (b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
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> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
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> (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

> (1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .
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> * * *
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> (d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.
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> * * *
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> (e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.
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> * * *

<u>Contract Causes of Action</u>

There is no dispute that the lease agreement and the associated option to purchase agreement were validly executed by parties with legal capacity to enter into contracts. The key issue is whether MGI's suspended status at the time that it attempted to exercise the option to purchase affected the validity of its exercise of the option.

Section 9 of the lease granted to MGI "an option to purchase the Land on the following terms and conditions:"

> 9.1 Lessee may exercise this option on or before September 30, 2019, provided Lessee is not then in default under this Lease, giving Lessor written notice of the exercise of the option.

MGI argues that this issue is irrelevant because it was a corporation in good standing at the time it entered into the lease and purchase option agreement in October, 2014. MGI's opposition states:

> [MGI] remained in good standing years after the commencement of the period for performance. Additionally, with regard to [MGI's] ability to transfer real property, [MGI] would have likely established good standing by the time that the parties executed a real estate purchase agreement, but we can never know, because before that could happen,

> Defendant McClaflin breached her promises to [MGI], selling the Subject Property to a third party instead. . . . Plaintiff could have revived its status before the signing of any documents necessary to close escrow on its purchase of the Subject Property, under its purchase option agreement.

Plaintiff's Opposition to Defendant McClaflin's Demurrer to the First Amended Complaint at 10:28-11:5.

MGI distinguishes the case of Erb v. Flower, 248 Cal. App. 2d 499, (Ct. App. 1967). In the Erb case, the plaintiff was an assignee of a corporation whose corporate powers were suspended for a period from before the commencement of a contract that ran from November 1962 through October, 1964, and its corporate status was not reinstated until after the expiration of the term of the contract. Under the contract the suspended corporation was guaranteed orders of a certain quantity of product. However, because the defendant placed no orders for the product during the contract term the plaintiff sued for breach of contract. The corporate status was reinstated after the term of the contract had expired, such that "during the entire performance period of the contract the plaintiff's assignor was incapable of performing its obligations under the contract." Erb at 500 (emphasis in original). The trial court found that the defendant's repudiation of the contract was justified under those circumstances because of the corporation's inability to perform during the contract term. The appellate court granted that the contract itself was valid, as it had been executed prior to the corporate suspension. However, it was unable to perform the contract during its term because of the suspension. Id. The appellate court affirmed the judgment, citing Vogue Creamery Co. v. Acme Ice Cream Co., 8 Cal. App. 2d 357 (1935):

> "*When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation, and cannot recover upon his offer of performance if he is not able and willing to perform according to the offer*." (Italics added; p. 359, citing Civ. Code, § 1495 and Dickey v. Kuhn, 106 Cal.App. 300 [289 P. 2422].)

Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967).

MGI argues that because "[h]ere, unlike the plaintiff in Erb, Plaintiff's corporate status was not suspended until years after the period for performance commenced." While it is true that MGI was a corporation in good standing at the time the lease and option were executed, at the time for performance, i.e. the time for exercising the option to create a new purchase contract, MGI's corporate powers, rights, and privileges were suspended by operation of law, rendering it "incapable of making a valid tender" of an option under the agreement. Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967). This suspended status continued from approximately two years prior to the attempt to exercise the option to purchase, and extended until

approximately three years after the deadline for exercising the option. The hypothetical possibility that MGI might have reinstated its corporate status in time to open escrow and make a payment under the option agreement does not affect McClaflin's legal rights to refuse the tender of the offer based on the corporation's status at the time the tender was made. MGI was equally able to rehabilitate its corporate status prior to exercising the option, or even in the period following and prior to the sale to Pacific two years later in 2021, but it did not.

In Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) a trial court renewed a judgment in favor of a corporation that was in good standing at the time of the judgment but had been suspended at the time that the corporation requested renewal of the judgment. The renewal of the judgment was overturned by the appellate court because of the application of Revenue and Taxation Code §§ 23301 and 23302, which disqualifies the corporation from "exercising any right, power or privilege" during a suspension period. The court held that "invocation of the benefits of California laws" is a right and privilege "reserved to those corporations which pay their franchise taxes in a timely fashion and remain in good standing with the California Secretary of State and taxing authorities." Timberline, 54 Cal. App. 4th 1361 at 1368. The court noted that the corporation "could have avoided this result by reviving itself prior to filing its application to renew the judgment, or at any time before its 10-year life expired." Id. at 1369.

MGI distinguishes Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) because MGI did in fact revive its corporate standing on or around November 14, 2022, which "has been held to validate otherwise invalid prior action" citing Timberline at 1366. The passage cited by MGI is dicta, listing circumstances in which courts have considered whether corporate reinstatement could save a prior action that had been taken during a suspension period. See, Traub Co. v. Coffee Break Serv., Inc., 66 Cal. 2d 368, 425 P.2d 790 (1967) (a judgment in favor of a corporation that was in good standing when the action was filed but was suspended during the pendency of the litigation was not invalidated where the defendant did not raise the issue until after the time for appealing the judgment had expired and the judgment had become final); Diverco Constructors, Inc. v. Wilstein, 4 Cal. App. 3d 6 (1970) (a motion to dismiss litigation based on a party's suspended corporate status was groundless where the corporation revived its status before the motion to dismiss was filed); A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d 499 (1969) (suspended corporation that obtained a writ of attachment and revived its corporate status before the filing of a motion to discharge the writ was still entitled to enforce it); Duncan v. Sunset Agr. Mins., 273 Cal. App. 2d 489 (1969) (trial court's determination that suspended corporation had no standing to defend the action was overturned where the corporate status was revived before the deadline for filing a motion to vacate the judgment had expired). In each of the cases listed as exemplars of this principle in the Timberline dicta cited by

MGI, the context was a judicial proceeding which favors judgment on the merits and disfavors pleas in abatement. A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d at 500 (1969). More importantly, each of those examples considers the timing of the revival of the corporation and whether it occurs within applicable deadlines. Those cases are distinguishable from the situation in this case because here the deadline for exercising the option had passed and the underlying lease and purchase option agreements had both expired when the corporate status was restored.

MGI also attempts to distinguish Damato v. Slevin, 214 Cal. App. 3d 668 (1989) in which the court of appeal upheld the trial court's grant of a summary judgment on the basis that a subsequent revival of corporate standing did not deprive the other party of its statutory right to treat the contract as voidable under the Revenue and Taxation Code.[2]

MGI's position relies heavily on the fact that it was a corporation in good standing with the capacity to enter into contracts at the time that it entered into the lease and purchase option agreements. However, MGI's arguments ultimately fail because the purchase agreement that it seeks to enforce in this action would have been formed at the time of its exercise of the option, a time when, as a suspended corporation, it did not have contracting capacity. The nature of an option to purchase agreement was discussed in the case of Auslen v. Johnson, 118 Cal. App. 2d 319, (1953):

> [An option to purchase real estate] is a unilateral agreement. The optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. Upon the lapse of that time the matter is completely ended and the offer is withdrawn. If the offer be accepted upon the terms and in the time specified, then a bilateral contract arises . . . .

Auslen v. Johnson, 118 Cal. App. 2d 319, 321–22 (1953). See also, Erich v. Granoff, 109 Cal. App. 3d 920 (1980):

> An option may be viewed as a continuing, irrevocable offer to sell property to an optionee within the time constraints of the option contract and at the price set forth therein. It is, in other words, a unilateral contract under which the optionee, for consideration he has given, receives from the optionor the right and the power to create a contract of purchase during the life of the option. "An option is a contract, made for consideration, to keep an offer open for a prescribed period" (1 Witkin, Summary of Calif.Law, 8th ed., Contracts, Œ 216). An option is transformed into a contract of

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[2] Revenue and Taxation Code § 23304.1(a): Every contract made in this state by a taxpayer during the time that the taxpayer's powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the request of any party to the contract other than the taxpayer were executed.

> purchase and sale when there is an unconditional, unqualified acceptance by the optionee of the offer in harmony with the terms of the option and within the time span of the option contract.

Erich v. Granoff, 109 Cal. App. 3d at 927–28.

Given that MGI did not have the legal capacity to form a bilateral purchase contract by exercising the option while its corporate status was suspended, there was no contract to breach and the First Cause of Action must fail. The Second, Third and Fourth Causes of Action for specific performance, intentional interference with contractual relations and breach of implied duty of good faith and fair dealing also depend on the existence of a contract and similarly cannot withstand the challenge of a demurrer under these facts.

Fraud Cause of Action

Plaintiff alleges in the Fifth Cause of Action for fraud that the Lessor Defendants committed fraud because, MGI alleges, at the time the lease and option agreement were executed in 2014 they included the option as an inducement for MGI to enter the lease but had no intention on honoring the option if MGI elected to exercise it. Complaint, ¶¶75-77.

The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. Witkin, Summary 11th Torts § 890 (2023). A promise to do something necessarily implies the intention to perform, and where that intention is absent, there is an implied misrepresentation of fact, which is actionable fraud. Id. § 899.

> In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations] "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered."

Lazar v. Superior Ct., 12 Cal. 4th 631, 645 (1996).

In this case, the following allegations are made in support of the fraud cause of action:

• The option to purchase was a material inducement to enter into the lease and option agreement. Complaint, ¶16.

• McClaflin "continued to delay" MGI's efforts to exercise the option. Complaint, ¶ 22.

• "[F]or reasons unknown to Plaintiff, Defendants never completed the transaction." Complaint, ¶30.

• Plaintiff is informed and believes, and thereon alleges that Defendants McClaflin and Wilson knowingly and willfully conspired to defraud Plaintiff by utilizing the false pretense that Plaintiff would have the right to purchase the Subject Property. Complaint, ¶75.

• On information and belief, Defendants McClaflin and Wilson had no intention of performing this promise when it was made. Complaint, ¶77.

As stated in the Reeder case:

> These allegations are the very sort of general and conclusory allegations that are insufficient to state a fraud claim. For one thing, plaintiff has alleged no facts or circumstances suggesting defendants' intent not to perform the alleged promise when it was made. "It is insufficient to show an unkept but honest promise, or mere subsequent failure of performance." [Citations]. Plaintiff has alleged no facts or surrounding circumstances suggesting anything more.

Reeder v. Specialized Loan Servicing LLC, 52 Cal. App. 5th at 804.

The extent of the allegations on the issue of McClaflin's allegedly false promise is that McClaflin "continued to delay" the transaction, Complaint, ¶22; that Plaintiff doesn't know why McClaflin never completed the transaction, Complaint, ¶30; and that "on information and belief" Defendants willfully conspired to defraud Plaintiff on false pretenses with no intention of performing the promise. Complaint, ¶¶75, 77.

Counterbalancing these "general and conclusory" allegations on information and belief, is the undisputed fact that Plaintiff did not have the legal capacity to enter into a purchase agreement at all times that it attempted to exercise the option before and after the option expired. "When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation"] . . . ." Damato v. Slevin, 214 Cal. App. 3d 668, 674 (1989).

Pacific's motion notes that it purchased the property on May 27, 2021, several months after February, 2021, by which time all communications had ceased between MGI and the Lessor Defendants. Complaint, ¶31. MGI's capacity to enter into contracts as a corporation in good standing was not revived until November 14, 2022. Complaint, ¶2.

Initially MGI asserted a cause of action for unjust enrichment against Pacific in its initial Complaint filed on December 13, 2022. Pacific initiated communication with counsel for MGI on March 9, 2023, and continued meet and confer communications with counsel for MGI through July 17, 2023. Declaration of Corey M. Day, dated August 18, 2023 ("Day Declaration") ¶¶5, 8, Exhibit 3. In the course of these communications counsel for MGI drafted the First Amended Complaint, converting the unjust enrichment claim against Pacific in the original Complaint to claims for intentional interference with contractual relations and specific performance in the

Complaint. Id., Exhibits 1, 2. Days before the Complaint was filed, Pacific advised MGI that the intentional interference claims of the Complaint were also deficient because the option had expired in 2019. Id., ¶8. Pacific further advised MGI that the intentional interference causes of action were not supported by evidence because MGI could not have entered into the purchase contract as a matter of law because at all relevant times its corporate status was suspended. Id., ¶¶6, 8. Pacific advised MGI that if the unsubstantiated claims against Pacific were not dismissed then Pacific would file this motion for sanctions. Id., Exhibit 3.

> Tortious interference with contractual relations requires "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage."

Ixchel Pharma, LLC v. Biogen, Inc., 9 Cal. 5th 1130, 1141 (2020).

It is undisputed that the lease and option to purchase contract expired in September, 2019, and that Pacific purchased the property in May, 2021. The Complaint alleges that "on information and belief" Pacific had become aware of MGI's contract and MGI's attempt to exercise the option, but that does not include any assertion that Pacific had any reason to believe that the option to purchase continued in existence or that MGI had a continuing ability to exercise the option. In fact, at the time of Pacific's purchase and for almost a year after that MGI continued in a state of corporate suspension with no capacity to enter into new agreements as a matter of law on the public record. Nevertheless, even after several months of discussion of these defects with counsel for Pacific MGI declined to withdraw the causes of action against Pacific. As a result, Pacific was forced to defend this lawsuit and file this request for sanctions.

The court finds that the allegations and factual contentions underlying the claims against Pacific are indisputably without legal or evidentiary support and that Plaintiff is not likely to be able to develop legal or evidentiary support for those claims after a reasonable opportunity for further investigation or discovery. Code of Civil Procedure § 128.7(b)(3). The court finds that Pacific exercised due diligence in attempting to persuade MGI to withdraw its claims against Pacific, beginning on March 9, 2023, through the date that the Complaint was filed, including its intention to seek sanctions. Code of Civil Procedure § 128.7(c). The court finds that more than 21 days have passed since the motion for sanctions was served on counsel for MGI on September 15, 2023. Code of Civil Procedure § 128.7(c)(1). The court finds that the persistence in asserting the claims in spite of Pacific's efforts to convince MGI to withdraw the claims is objectively unreasonable. Peake v. Underwood, 227 Cal. App. 4th 428 (2014); Guillemin v. Stein, 104 Cal. App. 4th 156 (2002).

Accordingly, the court finds that an award of sanctions is justified, and that terminating sanctions are a reasonable measure that is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Code of Civil Procedure § 128.7(d).

TENTATIVE RULING #3: DEFENDANT PACIFIC POWER PARTNERS' MOTION FOR TERMINATING SANCTIONS IS GRANTED AND PLAINTIFF'S COMPLAINT IS DISMISSED WITH PREJUDICE AS TO ALL DEFENDANTS.

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

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

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4. PC20210306 RON LAWRENCE & SON TRANS v. WASTE CONNECTIONS

Motion for Leave to File Cross-Complaint

The Complaint in this matter was filed on June 11, 2021, for damages caused by a tree falling on Plaintiff's trailer while it was parked on the property of Defendant Waste Connections of California. Defendant Waste Connections of California filed its Answer on August 2, 2021. After the Complaint was initially filed it was determined through discovery that the tree was located on the neighboring property, and an amended Complaint was filed on October 16, 2023 to add the name of the neighboring property owner. The neighboring property owner filed an Answer to the Complaint on December 21, 2023.

Defendant now seeks to file a Cross-Complaint against the neighboring property owner. According to the requirements of Code of Civil Procedure § 428.50 a Cross-Complaint must be filed at the same time as the party files an Answer to the Complaint:

> (a) A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint.
>
> (b) Any other cross-complaint may be filed at any time before the court has set a date for trial.
>
> (c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action.

However in this case, the neighboring property owner was not identified as a party until after the Answer was filed.

Code of Civil Procedure § 426.50 provides:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

The court finds that the motion is made in good faith and is unopposed.

TENTATIVE RULING #4: DEFENDANT WASTE CONNECTIONS OF CALIFORNIA'S MOTION FOR LEAVE TO FILE A CROSS-COMPLAINT 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. 23CV0943 WELLS FARGO BANK, N.A. v. DAVITT

Motion to Deem Matters Admitted in Request for Admissions

Plaintiff served Requests for Admissions, Set One, on Defendant on October, 12, 2023, but has not received any response.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). . . .
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.

Although Plaintiff has not requested monetary sanctions, "[i]t is mandatory that the court impose a monetary sanction . . . on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. The motion includes no information regarding the time to file the motion or the hourly rate of the attorney. The court orders Plaintiff to pay a sanction of $250 to Defendant by April 30, 2024.

TENTATIVE RULING #5: PLAINTIFF'S MOTION IS GRANTED. THE COURT ORDERS PLAINTIFF TO PAY A SANCTION OF $250 TO DEFENDANT BY APRIL 30, 2024.

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

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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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6. 23CV1593 MCDERMOTT v. GENERAL MOTORS, LLC.

Demurrer
Motion to Strike

Defendant filed a demurrer to Plaintiff's Complaint alleges as to the Fifth Cause of Action for Fraudulent Inducement-Concealment. Defendant also moves to strike punitive damages from the prayer for relief.

Plaintiff filed a First Amended Complaint on March 18, 2024.

Code of Civil Procedure § 430.41(a) requires the parties to meet and confer on an amended pleading before a demurrer can be filed to the amended pleading. Code of Civil Procedure § 435.5(a) contains the same requirement regarding a motion to strike.

TENTATIVE RULING #6: THE FILING OF A FIRST AMENDED COMPLAINT HAVING RENDERED THE MOTION MOOT, THE MATTER IS DROPPED FROM CALENDAR.

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. 24UD0044 THE BLUE BIRD COMPANY, LLC v. GRAY

Motion for Judgment on the Pleadings

Plaintiff filed a Complaint for unlawful detainer following foreclosure. Defendant filed an Answer that does not raise any cognizable defense to the unlawful detainer action.

Plaintiff filed this motion for judgment on the pleadings on February 28, 2024 pursuant to Code of Civil Procedure § 438, which states, in pertinent part:

> (b)(1) A party may move for judgment on the pleadings.
>
> * * *
>
> (c)(1) The motion provided for in this section may only be made on one of the following grounds:
>
> (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

Defendant filed a responsive affidavit on March 4, 2024, that does not raise any arguments that are responsive to the motion.

TENTATIVE RULING #7: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS 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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8. PFL20200697 KHADRA v. WU

RFO/OSC Hearing – New Trial

Petitioner requests a new trial following the trial that was conducted on January 30, 2024 through February 1, 2024. The basis for this request is 1) allegations of bias against Petitioner by attorney Burke, who was appointed to represent the minor in the proceedings; 2) failure of his counsel to prepare for trial; 3) that Judge Slossberg was not familiar with the history of the case and discriminated against Petitioner.

Burke filed a declaration in response to the Petition stating that an attempt to disqualify the judge pursuant to Code of Civil Procedure § 170.6 is untimely,[1] and that the Petition does not allege any legally sufficient reason to entertain a motion for a new trial.

To the extent that the Petitioner's complaint is based on the judge who heard the case, Petitioner's request is untimely as to any alleged conflict of interest. The court further finds that Petitioner has not set forth sufficient legal reasons to support his request nor has he provided a sufficient factual basis to support his claims of bias and discrimination.

TENTATIVE RULING #8: PETITIONER'S REQUEST FOR NEW TRIAL IS DENIED.

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

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

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[1] "If the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to, or who is scheduled to try, the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date." Code of Civil Procedure § 170.6(a)(2).

APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. PC20190143 DEWATER v. HOSOPO CORP. ET AL

Review Hearing-Case Management Conference

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 29, 2024, IN DEPARTMENT NINE.

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.

10. PCL20180059 BENNETT v. RELIABLE MANPOWER INC.

Motion for Judgment to Include Successor Corporation

Janice Bennett was an employee of a retail store, Alpine Market, which was owned by Reliant Manpower, Inc., a California corporation. Ms. Bennet obtained an award against Reliant Manpower, Inc., from the California Labor Commission on February 7, 2018, which was reduced to a civil judgment. Reliable Manpower, Inc. is currently a suspended corporation. Exhibit 1 to Amended Motion to Amend Judgment to Include Successor Corporation (filed March 7, 2024) ("March 7 Motion"). Sheeva, Inc. is also listed as a Defendant in the original judgment, as the parent corporation of Reliant Manpower, Inc. Although the judgment did not hold the parent company liable for the wage claims against the subsidiary, see Labor Commission Order, Case No. 08-77793 JS (Exhibit to March 7 Motion) at p. 6, the judgment does establish the corporate relationship of Reliant and Sheeva, Inc.

Ms. Bennet subsequently assigned the claim to George Sommers pursuant to Code of Civil Procedure § 673. On August 30, 2023, Sommers ("Assignee") filed a motion to amend the judgment to include Tahoe Green 2022, alleged to be the successor corporation to the judgment debtor Reliant Manpower, Inc. An amended motion was filed on March 7, 2024.

The motion argues that Tahoe Green 2022 should be added to the judgment based on the following indicators of a shared identity between Bennett's employers and Tahoe Green 2022:

Bennett was employed by two liquor stores, Alpine Market, located at 1950 Lake Tahoe Blvd. in South Lake Tahoe (Alcoholic Beverage Control License number 636253) and Green Tahoe, located at 3097 Harrison Ave., #2 in South Lake Tahoe (Alcoholic Beverage Control License number 636082)

Tahoe Green 2022 holds ABC License No. 636082 under the same name and operates from the same address as Green Tahoe, with Hossein Kazemi is listed as an officer of the licensee. Motion to Amend Judgment to Include Successor, filed August 30, 2023 ("August 30 Motion"), Exhibit 1.

Tahoe Green 2022 holds ABC License No. 636253 under the same name and operates from the same address as Alpine Market, with Hossein Kazemi is listed as an officer of the licensee. August 30 Motion, Exhibit 2.

Hossein Kazemi is listed as Director/CFO and Agent for Service of Process of Tahoe Green 2022 on the Secretary of State's website. August 30 Motion, Exhibit 3.

Labor Code § 1434 provides:

> A successor employer is liable for any wages, damages, and penalties its predecessor employer owes to any of the predecessor employer's former workforce if the successor employer meets any of the following criteria: . . . (b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

Labor Code § 200.3 further provides:

> (a) A successor to a judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment, after the time to appeal therefrom has expired and for which no appeal therefrom is pending. Successorship is established upon meeting any of the following criteria:
>
> (1) Uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. . . .
>
> (2) Has substantially the same owners or managers that control the labor relations as the judgment debtor.

*   *   *

Although the motion is unopposed, the court finds the evidence in the record is insufficient to grant the motion. There is no request for judicial notice of the corporate information from the Secretary of State or Alcohol Beverage Control licensing websites. Although the court could take judicial notice of these matters on its own motion, Evidence Code § 455 requires an opportunity for the other party to be heard on the matter:

> (a) If the trial court has been requested to take or has taken or proposes to take judicial notice of such matter, the court shall afford each party reasonable opportunity, before the jury is instructed or before the cause is submitted for decision by the court, to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.
>
> (b) If the trial court resorts to any source of information not received in open court, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action and the court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

For the tentative ruling posted for the March 22, 2024 hearing, the court indicated that it would consider taking judicial notice of the above corporate information on its own motion, but in

order to give Tahoe Green 2022 an opportunity to object the court continued the matter to March 29, 2024. Upon review of the file, Tahoe Green 2022 has not filed any objections. As such, the court on its own motion takes judicial notice of the corporate information from the Secretary of State or Alcohol Beverage Control licensing websites. With this taking of judicial notice, the court finds good cause to grant Plaintiff's motion.

TENTATIVE RULING #14: PLAINTIFF'S 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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11. 23CV0924 LOANDEPOT.COM LLC v. VAINAU

Order of Examination Hearing

A judgment in favor of Plaintiff was entered on August 15, 2023 in the amount of $79,691.74. Defendant did not appear at the prior Order of Examination hearing on November 17, 2023. At that hearing, the court found that service was properly completed on January 2, 2023. The court ordered that if Defendant does not appear at the next hearing a bench warrant will issue in the amount of $2,500.

At the hearing on January 26, 2024, the court continued the matter at Plaintiff's request and stated that a bench warrant in the amount of $2,500 would be issued at the next hearing if the Defendant does not appear. Plaintiff was ordered to serve a copy of the Minute Order from both hearings on Defendant. Proof of service of notice is not in the court's file.

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 29, 2024, IN DEPARTMENT NINE.

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. 24CV0212 NAME CHANGE OF ROGERS

Petition for Name Change

Petitioner filed a Petition for Change of Name on February 2, 2024.

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

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

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

TENTATIVE RULING #12: THE MATTER IS CONTINUED TO MAY 10, 2024, TO ALLOW PETITIONER AN OPPORTUNITY 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).

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13. 23CV2147 NAME CHANGE OF KENDRICK

Petition for Name Change

Petitioner filed a Petition for Change of Name on December 8, 2023.

Proof of publication was filed on January 29, 2024**,** as required by Code of Civil Procedure § 1277(a).

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

TENTATIVE RULING #13: 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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14. 23CV0837 STATE FARM FIRE AND CASUALTY COMPANY v. CURTIS INDUSTRIAL, INC.

Order of Examination Hearing

At the hearing on January 26, 2024, the court found that Mr. Curtis was properly served on December 12, 2023. Due to the non-appearance of Mr. Curtis, the court issued a bench warrant in the amount of $2,500 and stated that court would release the bench warrant if Mr. Curtis does not appear at the next hearing.

TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 29, 2024, IN DEPARTMENT NINE.

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.