05-31-24
Dept. 9
Tentative Rulings

**1. 23CV0678 HANSEN v. BLACK OAK LAND HOLDINGS, LLC**

**Sanctions Hearing**

Following is the Tentative Ruling that was posted prior to the hearing of this matter which was scheduled to be heard on May 10, 2024. That hearing was continued at the parties' request because they were pursuing settlement.

Plaintiff paid Defendant $13,999 for the use of the Black Oak Mountain Vineyard (BOMV") as a wedding venue, Complaint ¶8, but just before the event was scheduled to occur on September 10-11, 2022, the Mosquito Fire broke out and BOMV informed Plaintiff, on September 9, 2022, that the event would have to be rescheduled and offering some new dates. Complaint ¶12-13; Exhibit 3. On such short notice Plaintiffs were not able to reschedule other vendors or the travel plans of attendees, so they found another venue and were married on September 10, 2022. Complaint ¶¶11, 14, 19.

When Plaintiffs sought a refund of their payment for the use of the venue Defendants took the position that the force majeure clause in the parties' contract would only require a refund if Defendant "if the event cannot be rescheduled." Complaint ¶17. Plaintiff communicated to Defendant that rescheduling was not an option because of commitments to other vendors and inability to change travel plans of friends and family at the last minute. Complaint ¶18; Exhibit 4. Defendant took the position that, based on the contract language, whether the event could be rescheduled was a determination that could only be made by Defendant. Complaint, Exhibits 6, 8.

Pursuant to an arbitration clause in the contract, Plaintiff submitted a demand for arbitration through JAMS and paid the non-refundable $1,750 JAMS fee. Following service of that demand, on March 1, 2023, counsel for Defendant contacted Plaintiff to inform Plaintiff that she would be representing Defendant but did not address the request for arbitration. Defendant did not otherwise respond to emailed communications related to arbitration from JAMS or from Plaintiff, and at the end of March, 2023, JAMS closed the arbitration for non-payment of Defendant's $1,750 share of the initial filing deposit. Although Defendant never responded to arbitration communications, it claims in the discovery responses that were eventually provided that Plaintiff failed to mitigate damages by failing to file a motion to compel arbitration. *See* Defendant's Opposition, Exhibit D, Form Interrogatory 115.2.

Plaintiff's Complaint was filed on May 4, 2023, and includes causes of action for breach of contract (refusal to return the funds and refusal to arbitrate the dispute), breach of the implied covenant of good faith and fair dealing and unjust enrichment.

On May 5, 2023, following service of the Summons and Complaint, counsel for Defendant informed Plaintiff that she was authorized to accept electronic service and provided an email address. Plaintiff sent the Summons and Complaint via email on May 9, 2023. Defendant did not

return the Notice of Acknowledgment and Receipt, and did not file an Answer within the statutory deadline. On July 14, 2023, Defendant served its Answer, designating the same email address. On August 4, 2023, Plaintiff served discovery to that email address but did not receive a response or a request for an extension of time to respond. Defendant's discovery responses were due on September 6, 2023. There was no response to Plaintiff's email of September 13, 2023, expressing a follow up request for a discovery response by September 15, 2023.

Plaintiff's motion to compel a discovery response was filed on September 25, 2023, and served the motion on two email addressed Defendant had provided. No opposition was filed, and when Plaintiff sent an email inquiring about Defendant's intent to oppose the motion on December 6, 2023, Defendant's counsel responded from the designated email address that she had not received the motion and had already sent the discovery responses. See Defendant's Opposition, Exhibits B and C. This court granted the motion to compel on December 15, 2023, ordering Defendant to provide responses by December 30, 2023.

Plaintiff filed this motion for terminating sanctions on February 6, 2024, and Defendant filed an Opposition on March 12, 2024, serving Plaintiff with those pleadings from the designated email for Defendant's counsel.

On March 11 and 13, 2024, Defendant served discovery responses from the designated email address and by fax, but the responses were unverified. *See* Defendant's Opposition, Exhibit D.

Plaintiff requests terminating and monetary sanctions pursuant to Code of Civil Procedure § 2023.030 for Defendant's failure to respond to Plaintiff's discovery (Form Interrogatories-Limited Civil Cases, Set One; Request for Production of Documents; and Special Interrogatories, Set One). That section provides, in pertinent part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:
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> (a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. . . . If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction 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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> * * *
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> (d) The court may impose a terminating sanction by one of the following orders:

> (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.
> (2) An order staying further proceedings by that party until an order for discovery is obeyed.
> (3) An order dismissing the action, or any part of the action, of that party.
> (4) An order rendering a judgment by default against that party.

* * *

Plaintiff argues that terminating sanctions are supported in this case by Code of Civil Procedure § 2023.010(d), (g) and (i), which provide options for penalties for misuse of discovery: failing to respond to an authorized method of discovery, disobeying a court order to provide discovery; and failing to confer in a reasonable and good faith attempt to resolve informally any dispute concerning discovery.

Plaintiff requests that monetary sanctions be ordered jointly and severally against Defendant and Defendant's counsel for failure to meet and confer (Code of Civil Procedure § 2023.020) and § 2023.010(d) (failure to respond to an authorized method of discovery).

Plaintiff argues that Defendant's selective receipt of email correspondence and failure to respond to communications has delayed the prosecution of the case by delaying the Answer by two weeks and the discovery responses by four months. Plaintiff further argues that in spite of his attempt to limit delays and costs by choosing to file a Limited Jurisdiction action, Defendant's non-responsiveness has increased Plaintiff's litigation costs. By ignoring requests for arbitration pursuant to the terms of the contract, resulting in Plaintiff's loss of a non-refundable $1,750 JAMS deposit. By failing to respond to the motion to compel, Defendant deprived Plaintiff of the ability to recover $1,635 in costs of bringing that motion (because the statute only authorizes recovery of fees and costs against a party who unsuccessfully defends against a motion to compel discovery), as well as $1,585 in costs for bringing the instant motion for terminating sanctions.

Further, Plaintiff argues that the discovery responses that were finally provided are not code compliant because:

1. They are unverified.

   Defendant represents that "supplemental documents production and verifications to the written discovery responses were served on Plaintiffs as promised." Supplemental Declaration of Alicia Dearn, dated March 20, 2024, ¶2. ("Supplemental Dearn Declaration"). The verifications provided are dated March 20, 2024, nearly three months after the court's deadline for discovery responses.

2. Responses to Request for Production of Document did not provide documents that are responsive to the requests as required by Code of Civil Procedure § 2031.280(a) until after this motion was filed.
3. Instead of producing original emails, the responses transcribe the content of emails into a separate document. *See* Declaration of Kristopher Grant in Support of Reply to Defendant's Opposition, dated March 15, 2024 ("Grant Reply Declaration"), Exhibit 3.

   Defendant represents that the March 11, 2024, responses were not original because the originals had to be procured from a third-party software company and the originals have since been produced. Whether or not that is true, proper responses were not provided until after thins motion was filed.

In response Defendant argues:

1. Plaintiff did not serve the motion to compel on Defendant. Exhibit B of Defendant's Opposition shows email correspondence dated December 6, 2023, stating that Defendant never received the motion to compel and that discovery responses had already been served by mail. This conflicts with the Proof of Service attached to the motion showing service by email on September 25, 2023.
2. Plaintiff did not serve notice of the court's ruling. The court's Minute Order does not indicate that the court required Plaintiff to serve notice of the ruling.
3. Defendant claims that discovery responses were prepared and completed by August 16, 2023, but due to clerical error the responses were not actually mailed. Exhibit A to Defendant's Opposition shows a computer file index with various responses listed, the latest dated September 4, 2023. Three out of five of the files titled as discovery responses include the designation "Angela's Draft". Plaintiff argues that because "Angela" is not an attorney of record in the case, this indicates that these responses were not completed as of the file dates. The other two have unspecified file dates sometime after February 2, 2024.

<u>Request for Judicial Notice</u>

Defendant requests the court to take judicial notice of the Complaint in this action and the court's Tentative Ruling in this matter dated December 15, 2023. These documents constitute judicial records and recorded documents that are appropriately subject to judicial notice pursuant to Evidence Code §§ 451-453.

The court finds that Defendant's counsel's claim to have received some but not all of the email correspondence sent to her email address of record is not credible. The court finds that Defendant's claim that it did not receive notice of the motion to compel is not credible. The court finds that Defendant's failure to meet and confer, failure to respond to authorized

discovery and failure to comply with a court's discovery order constitute a misuse of discovery under Code of Civil Procedure § 2023.010.

These findings support award of monetary sanctions to make the Plaintiff whole for Defendant's delays and non-compliance. However, the court declines to impose the "drastic measure" of terminating sanctions.

> Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." ( *Deyo v. Kilbourne*, *supra.*, 84 Cal.App.3d at p. 793; see *Wilson v. Jefferson* (1985) 163 Cal.App.3d 952, 958 [210 Cal.Rptr. 464]; *Stein v. Hassen* (1973) 34 Cal.App.3d 294, 301-303 [109 Cal.Rptr. 321].)

Puritan Ins. Co. v. Superior Ct., 171 Cal. App. 3d 877, 884 (Ct. App. 1985).

**TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 31, 2024, IN DEPARTMENT NINE.**

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

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

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

**2. 23CV1387 DEITZ TRUST v. CURTIS, ET AL**

**Motion to Vacate Default Judgment**
**Status Conference**

Defendants move to set aside a default that was entered on April 29, 2024. They claim that they were never served and only received the Summons and Complaint on May 1, 2024, when it was too late to file an Answer.

The proof of service filed by Plaintiff indicates that substituted was made on Defendant's son at Defendants residential address, and by mail. The proof of service includes a declaration of diligence listing two attempts at personal service on two successive days at Defendants' home and that on the third day substituted service was made on the Defendants' son on September 2, 2023. However, Defendants assert that their son is six years old.

Plaintiff cites the requirements of Code of Civil Procedure § 473.5 in arguing that the motion should be denied. That section provides:

> (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
>
> (b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
>
> (c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

Plaintiff argues that Defendants did have actual notice both through the substituted service and by mail. Plaintiff declares that although the motion was brought within the deadlines imposed by statute, it did not provide notice of the motion to Plaintiffs, who only became aware

of it during the case management conference. Plaintiffs further argue that Defendants failed to accompany the motion with a proposed Answer as required by the statute.

Given the strong public policy in favor of resolving cases on the merits and to resolve this motion on its merits rather than a technicality, the court continues the matter to June 14, 2024 to afford Defendants an opportunity to lodge a proposed answer with the court, which may be attached to a declaration for filing. The proposed answer must be lodged with the court and served on Plaintiff by no later than June 10, 2024.

**TENTATIVE RULING #2: THE COURT CONTINUES THE MATTER TO JUNE 14, 2024 TO AFFORD DEFENDANTS AN OPPORTUNITY TO LODGE A PROPOSED ANSWER WITH THE COURT, WHICH MAY BE ATTACHED TO A DECLARATION FOR FILING. THE PROPOSED ANSWER MUST BE LODGED WITH THE COURT AND SERVED ON PLAINTIFF BY NO LATER THAN JUNE 10, 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).**

**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. PC20200294 ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD**

**Motion for Judgment on the Pleadings**
**OSC Hearing**

On April 16, 2024, Cross-Defendant Georgetown Divide Recreation District ("District") filed a Motion for Judgment on the Pleadings as to the Eighth and Nineth Causes of Action in the Second Amended Cross Complaint ("SACC"), filed on February 10, 2023, related to disputes that have arisen about easements that are the subject of this litigation.

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

With respect to the District and the causes of action that are subject to this Motion, the SACC alleges: 1) the District refuses to acknowledge the Highway 49 Easement at its current location and refuses to approve/acknowledge a map showing the location and width of said easement, in an attempt to force Cross-Complainants to abandon the Highway 49 Easement and use the undeveloped Rattlesnake Bar Easement so that the District can take the Highway 49 Easement for their sole use (SACC ¶¶ 101-106), and the District has taken portions of the Highway 49 Easement by constructing fencing and gates that reduce the use of the easement (SACC ¶¶ 101-106), and 2) the District took portions of the Cross-Complainants' property without due process and erected gates and fencing that reduced the use and scope of the easement without due process (SACC ¶¶ 107-110).

Request for Judicial Notice

The District has filed a request for the court to take judicial notice of several pleadings and rulings on file with the court in this case, that the District is a local public entity/agency, a park and recreation special district, of several Grant Deeds, of the District's Board Meeting Agenda, and of staff reports and minutes for three meetings. (District's Request for Judicial Notice in Support of Motion for Judgment on the Pleadings to the Second Amended Cross-Complaint filed April 16, 2024.)

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"; "official

acts of the legislative, executive and judicial departments of the United States and of any state of the United States"; "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States"; and, "facts 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(b)-(d), (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, District's Request for Judicial Notice is granted.

Standard of Review

Code of Civil Procedure § 438(c)(1)(B) allows a party to file a motion for judgment on the pleadings challenging a complaint or cross-complaint if it "does not state facts sufficient to constitute a cause of action."

A motion for judgment on the pleadings serves the same purpose as a general demurrer and a special demurrer for lack of jurisdiction pursuant to Code Civ. Proc. § 430.10(a). Code Civ. Proc. § 438(c).

"All facts alleged in the complaint are deemed admitted, and we give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context. . . . We are not concerned with a plaintiff's possible inability to prove the claims made in the complaint, the allegations of which are accepted as true and liberally construed with a view toward attaining substantial justice." (CD Investment Co. v. California Ins. Guarantee Assn. (2000) 84 Cal.App.4th 1410, 1417.) "If a pleading is defective but amendable, judgment on the pleadings should be granted but with leave to amend." (Cloud v. Northrop Grumman Corp. (1998) 67 Cal.App.4th 995, 1011.)

Meet and Confer Requirement

Code of Civil Procedure §439(a) provides: "Before filing a motion for judgment on the pleadings . . . the moving party shall meet and confer . . . with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. . . . (1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims." (emphasis added)

A "determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings." (CCP § 439(a)(4).) However, the parties should attempt to abide by the meet and confer requirement.

Cross-Complainants allege that in the prior meet and confer efforts, a discussion of physical and regulatory takings never took place, specifically Penn Cent. Transp. Co. v. New York City (1978) 438 U.S. 104, which District heavily relies on in its Motion. Cross-Complainants state this shows that District did not engage in the meet and confer process in good faith.

The Court declines to reach any decision regarding the adequacy of the meet and confer efforts, finding it does not change the final outcome.

Federal Pleading Standard

The federal pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. . . . To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (Ashcroft v. Iqbal (2009) 556 U.S. 662, 678 [citing Bell Atl. Corp. v. Twombly (2007) 550 U.S. 544].)

Pleading Municipal Liability Under 42 U.S.C. §1983

Cross-Complainants allege that a Fifth Amendment Taking claim and Fourteenth Amendment Due Process claim are not required to be brought under 42 U.S.C §1983, but if that is required, Cross-Complainants request leave to amend. (Knick v. Twp. Of Scott (2019) 588 U.S. 180, 194 ["[S]omeone whose property has been taken by a local government has a claim under § 1983 for a 'deprivation of [a] right[ ] . . . secured by the Constitution' that he may bring upon the taking in federal court."]; Zinermon v. Burch (1990) 494 U.S. 113, 125 ["A § 1983 action may be brought for a violation of procedural due process . . ."]; California DUI Lawyers v. Dep't of Motor Vehicles (2022) 77 Cal.App.5th 517, 534 ["Section 1983 is not itself a source of substantive rights, 'but merely provides "a method for vindicating federal rights elsewhere conferred."'"].)

District responds that "may" in Knick focuses on the timing of when the case can be brought, and not the location. However, the Court also adds: "The 'general rule' is that plaintiffs may bring constitutional claims under §1983 'without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." Knick at 194 (emphasis added). The Knick Court does not say that the claims must be brought under §1983.

The court does not read any of District's cited cases as requiring a Fifth Amendment Taking or Fourteenth Amendment Due Process Claim to be brought under §1983.

Ripeness

Cross-Complainants allege they can avoid the final decision requirement and that the ripeness doctrine does not bar the Taking and Due Process claims citing Traweek v. San Francisco (9th Cir. 1990) 920 F.2d 589, 594. District argues that regardless of the futility of map

approval, that after a Final Decision is reached or futility is alleged, the landowner must seek judicial review of that decision by writ of mandamus. District argues that a claim for regulatory taking is not ripe unless the landowner has obtained a "final decision" and exhausted administrative and judicial remedies, citing various cases including Pakdel v. City and County of San Francisco (2021) 594 U.S. 474, 480. However, in Pakdel, the Court held that the owners did not have to comply with administrative procedures for seeking relief in order to satisfy the finality requirement and that Congress has not imposed a strict administrative-exhaustion requirement for takings plaintiffs. (Id. at 480-481.) District relies on language in Pakdel stating "failure to properly pursue administrative procedures may render a claim unripe if avenues remain for the government to clarify or change its decision." (Id. at 480, italics in original.) However, Pakdel further explains that the finality requirement ensures the plaintiff has actually been injured by the government's action and isn't suing on a hypothetical harm; (Id. at 479 ["Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution."].)

Cross-Complainants have approached the District on multiple occasions and the Board of Supervisors has denied the easement locations proposed. The District's general manager went so far as to testify that "she did not know how the District could approve a map establishing the location of the easement." (SACC, p. 9-10, ¶38.)

Continuing to approach the District for resolution would be futile and the dispute is ripe for judicial resolution.

Fifth Amendment Taking

The Takings Clause of the Fifth Amendment to the United States Constitution states: "Nor shall private property be taken for public use, without just compensation."

Cross-Complainants allege that District refuses to acknowledge the existence of the Highway 49 Easement at its current location, and yet, also refuses to approve or acknowledge a map showing the location and width of said easement. District has constructed fencing and gates that Cross-Complainants argue reduces the use of the easement. The value of the easement exceeds $50,000.00. Cross-Complainants further allege that the gates and locks placed by District may constitute a taking because they create an unreasonable interference with the easement, citing Van Klompenburg v. Berghold (2005) 126 Cal.App.4th 345, 350.

District argues that a servient tenement owner has a right to construct a fence and a gate across an easement provided it does not unreasonably interfere with the easement's purpose, also citing Van Klompenburg. (court emphasis added) Cross-Complainants allege that the locks placed by District malfunction and do not always allow them access to their properties.

Based on the facts alleged, this case is analogous to Van Klompenburg, where the Court held: "[E]ach time plaintiffs, their guests or their agents wish to visit plaintiffs' property, they

must stop, get out of their vehicles, open at least one gate, and once through, repeat the process to close the gate. Additionally, plaintiffs' guests and agents who do not have keys will have to make arrangements to obtain them before visiting the property." (Id.)

"All facts alleged in the complaint are deemed admitted, and we give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context. . . . We are not concerned with a plaintiff's possible inability to prove the claims made in the complaint, the allegations of which are accepted as true and liberally construed with a view toward attaining substantial justice." (CD Investment Co. v. California Ins. Guarantee Assn. (2000) 84 Cal.App.4th 1410, 1417.) Based on the facts alleged, it is possible that Cross-Complainants may be able to prove a Fifth Amendment Taking.

District also argues that there is no Fifth Amendment taking when a public entity asserts its police power to protect its own property, the property of others, and/or the general welfare, citing Penn Cent. Transp. Co. v. New York City (1978) 438 U.S. 104, 133, fn. 8. That case is distinguishable from the present case, in that it involved protecting historic landmarks and neighborhoods, not bathrooms. That Court also held: "In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole…." (Id. at 130-131.) By placing gates, fencing, and locks restricting Cross-Complainants' entry to their properties, in order to protect property including bathrooms (which arguably could be locked), a taking may be found.

District's Motion for Judgment on the Pleadings as to the Eighth Cause of Action is DENIED.

Fourteenth Amendment Due Process

The Fourteenth Amendment to the United States Constitution states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Cross-Complainants allege they have a legitimate claim of entitlement over the easement based on the 1977 Grant Deed and they are seeking to enforce their rights, citing Mosier v. Mead (1955) 45 Cal. 2d 629, 632. The California Supreme Court has held that "[a]n easement is generally defined as an 'interest in land created by grant or agreement, express or implied, which confers a right upon the owner thereof to some profit, benefit, dominion, or lawful use out of or over the estate of another.'" Id. at 632. District argues that the conduct alleged by

Cross-Complainants does not "shock the conscience" or interfere with rights, citing Nunez v. City of Los Angeles (9th Circ. 1998) 147 F.3rd 867, 871.

"All facts alleged in the complaint are deemed admitted, and we give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context. . . . We are not concerned with a plaintiff's possible inability to prove the claims made in the complaint, the allegations of which are accepted as true and liberally construed with a view toward attaining substantial justice." (CD Investment Co. v. California Ins. Guarantee Assn. (2000) 84 Cal.App.4th 1410, 1417.) Based on the facts alleged, it is possible that Cross-Complainant's may be able to prove that District's actions interfere with their rights, constituting a violation of the Fourteenth Amendment.

District's Motion for Judgment on the Pleadings as to the Ninth Cause of Action is DENIED.

Order to Show Cause re Sanctions

Under CCP Section 128.5(a), "[a] trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." Per the code, expenses shall not be ordered, absent notice and an opportunity to be heard. Plaintiff's counsel duly requested oral argument and then failed to appear at the March 22, 2024 hearing without notice. This caused both Defendants' counsel and the court to expend time which ended up being unnecessary. On the court's own motion, the court set a hearing for sanctions for May 10, 2024 (later continued to May 31, 2024) due to the nonappearance. Parties were directed to file any pleadings regarding the issue of sanctions by April 19, 2024. This minute order was sent by the court to all parties. The court therefore finds that Plaintiff's counsel had notice and an opportunity to be heard.

On April 19, 2024, Plaintiff's counsel filed a response, followed by a reply filed by Defendants' counsel on April 29, 2024. Per Plaintiff's response, he was upset by the court's tentative ruling for the March 22, 2024 hearing, directed his staff to request oral argument, and by the next day determined that the outcome would not change, so he decided to not appear nor did he notify the court or opposing counsel of his decision to not appear. The court finds it important to note for the parties that, despite the concerns raised by counsel, when appropriate, the court has reconsidered and changed its rulings based on oral argument from the parties. Adoption of the tentative ruling is not a foregone conclusion.

Per Defendants' counsel, he expended $3,000 in attorney's fees for his attendance at the hearing. The court finds that sanctions are appropriate, finding that Plaintiff's counsel's actions in failing to notify the court and opposing counsel of his nonappearance were without merit and in bad faith. However, the court finds the $3,000 requested by Defendants' counsel is excessive

and unsupported. The hearing itself took less than 10 minutes, and while Defendant's counsel was in court since the beginning of the calendar, totaling over an hour in court time, even with reasonable travel time, the court cannot find that 4 billable hours is justifiable. Further, given the availability of a zoom appearance, the court cannot justify the amount of time claimed by counsel, particularly for a law and motion hearing. Moreover, Defendants' counsel's declaration failed to provide any justification for the $750 billing rate, substantially higher than the $375 billable rate the court previously attributed to Plaintiff's counsel in its December 5, 2023 ruling.

Instead, the court imposes a sanctions award of $375 against Plaintiff's counsel for his nonappearance, utilizing the same billing rate attributed to Plaintiff's counsel and finding 1 hour of attorney time is the reasonable time expended for this hearing by Defendants' counsel. Plaintiff's counsel is ordered to pay $375 to Defendants' counsel directly under CCP § 128.5 by June 10, 2024.

**TENTATIVE RULING #3:**

1) **CROSS-DEFENDANT GEORGETOWN DIVIDE RECREATION DISTRICT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2) **CROSS-DEFENDANT GEORGETOWN DIVIDE RECREATION DISTRICT'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO THE EIGHTH AND NINETH CAUSES OF ACTION IS DENIED.**
3) **PLAINTIFF'S COUNSEL IS ORDERED TO PAY $375 TO DEFENDANTS' COUNSEL DIRECTLY UNDER CCP § 128.5 BY JUNE 10, 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).**

**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.**

**4. 22CV1379 GONZALEZ v. GENERAL MOTORS, LLC**

**Compliance Review – Sanction**

At the hearing on May 10, 2024, the court heard oral arguments. At that hearing, the Plaintiff's motion to compel compliance with the court's June 30, 2023, Order, and the motion production of verified, Code-compliant responses to Plaintiff's Request for Production, Set One, Nos. 16, 19, 20, 21, 22, 25, 26 and 27, were granted.

The court set a Review Hearing on May 31, 2024, in order 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).

The court trailed the issue of monetary sanctions, including Plaintiff's request for additional monetary sanctions in the amount of $4,169.40 for failure to comply with the previous Order to pay sanctions, and payment to the court of $1,500 in sanctions for violation of a lawful court Order pursuant to Code of Civil Procedure § 177.5.

**TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 31, 2024, IN DEPARTMENT NINE.**

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

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