

1. 24CV0666 ROCHE ET AL v. MEDINA AKERS

Motion to Be Relieved as Counsel

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

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been an irretrievable break in the attorney-client relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion was served on the Plaintiffs at their last known address May 20, 2024.

There is a Case Management Conference scheduled on October 1, 2024, which is not listed in the proposed Order. The court grants the motion effective upon filing of the proof of service indicating service of the order on the client. The court directs counsel to submit a revised proposed order which includes the October 1, 2024 hearing date.

TENTATIVE RULING #1:

THE COURT GRANTS THE MOTION EFFECTIVE UPON FILING OF THE PROOF OF SERVICE INDICATING SERVICE OF THE ORDER ON THE CLIENT. THE COURT DIRECTS COUNSEL TO SUBMIT A REVISED PROPOSED ORDER WHICH INCLUDES THE OCTOBER 1, 2024 HEARING DATE.

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

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

2. PC20160529 CALVARY SPV I, LLC v. MCCRACKEN

Claim of Exemption

Judgment was entered on April 11, 2019, in the amount of \$21,739.33. To date, credits in the amount of \$1,000 have been received. No voluntary payments have been made since 2019. Interest is accruing at 10% per year.

An automatic claim of exemption to Judgment Creditor's bank levy of Judgment Debtor's Bank of America account pursuant to CCP 704.080 was received from the Sheriff regarding funds in excess of the statutorily exempt amount. Judgment creditor received a Memorandum of Garnishee stating that \$11,362.52 was captured in excess of the exempt amount and is holding \$12,620.24 pending further instructions. Judgment debtor has not filed a separate claim of exemption, nor have they provided any documentation to trace the funds which were not automatically exempt.

There are exemptions that are applicable to bank account levies that depend on the source of the levied funds, but Judgment debtor has the responsibility to trace those funds to the exempt source, pursuant to CCP 703.080. Judgment debtor has failed to do so. At the hearing, the burden shall be the judgment debtor to make a sufficient showing that the levied funds are exempt.

TENTATIVE RULING #2:

APPEARANCES ARE REQUIRED ON JUNE 21, 2024 AT 8:30 A.M. 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.

3. PC20190143 DEWATER v. HOSOPO CORP ET AL
Case Management Conference

TENTATIVE RULING #3:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 21, 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.

4. 24CV0678 DISCOVER BANK v. KONONOV

Motion to Quash

The Complaint was filed on April 4, 2024. Proof of service was filed on April 18, 2024, stating Defendant was personally served and provided his name. Service was done by a registered California process server.

“When a defendant challenges the court’s personal jurisdiction on the ground of improper service of process ‘the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service.’ *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413. A valid proof of service creates a rebuttable presumption that papers were properly served and therefore received. *Dill v. Berquist Construction Co., Inc.* (1994) 24 Cal.App.4th 1426, 1441-42. Here, Evidence Code section 647 provides that a registered process server’s declaration of service establishes a presumption affecting the burden of producing evidence the facts stated in the declaration. (See also *FlovevorInternat. Ltd v. Superior Court* (1997) 59 Cal.App.4th 789, 795 [filing of proof of service that complies with the applicable statutory requirements creates a rebuttable presumption of proper service].) Here, the Plaintiff properly filed a proof of service thus creating a rebuttable presumption of service of process upon the Defendant.

Defendant claims he has not lived at the address of service since October 2022. He states he was living in Berkeley on the date of service, where he continues to live. He states he has several witnesses who can attest to the fact that he was living in Berkeley. No documentation was provided to support this contention.

TENTATIVE RULING #4:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 21, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. 24CV0870 MATTER OF K. LEE

Compromise of Claim of Minor

This is a Petition to compromise a minor's claim. The minor's father was appointed guardian ad litem for the purpose of this hearing as of May 2, 2024. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$8,000.

The Petition states the minor sustained injuries to her neck, chest and right shoulder, as well as mental health consequences including feelings of anxiety, nightmares and fear resulting from an auto accident in 2022. There is no copy of the accident investigation report filed with the Petition, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(4).

The Petition states there are no reimbursable medical expenses that would be deducted from the settlement.

The Petition states that the minor has fully recovered and there are no permanent injuries. There is no doctor's report concerning the minor's condition and prognosis of recovery attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$2,000.00, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does not include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The minor's attorney also requests reimbursement for costs in the amount of \$450. The amount of \$435 is attributed to court filing fees, and a copy of the check for the other \$15.00 is attached to substantiate the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the \$5,550 due to the minor, the Petition requests that they be deposited into an insured account, subject to withdrawal with court authorization. The Petition does not include the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing is required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #5:

THE HEARING IS CONTINUED TO FRIDAY, JULY 19TH AT 8:30 A.M. IN DEPARTMENT NINE, TO ALLOW THE PARTIES TO CURE THE DEFECTS NOTED ABOVE.

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

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6. 23CV2276 PALLCO ENTERPRISE INC DBA ORION OUTDOOR MEDIA v. TRAVERSO

Writ of Attachment

At the hearing of May 24, 2024, the court issued its tentative ruling; however, the parties were directed to meet and confer, and were given until June 7, 2024, to file additional briefings on jurisdiction and until June 14, 2024 to file briefings on status.

In regard to jurisdiction, Plaintiff argues that CCP 483.101(a) authorizes a Right to Attach Order and Writ of Attachment in any case where there is a “claim” for money readily ascertainable “not less than” \$500.00. At the time the Application was filed, \$50,726.00 plus interest, costs, and attorney’s fees were allowed by the contract. The Complaint prayed for prejudgment interest in paragraph 17, which was further set out in the Declaration of B. Palley. Plaintiff states that no objection was interposed and no arguments were made by opposition papers that interest was not part of the claim nor constituted damages, allowing plaintiff to address the matter in a reply brief. Plaintiff attempts to use two cases for the proposition that prejudgment interest is part of the claim for attachment and that neither court found that interest didn’t qualify as part of the “claim.”¹² Plaintiff also states Civil Code 3287 includes prejudgment interest as an item of damage.

Defendant responds by saying that Plaintiff can’t show entitlement to an order of attachment because there is no outstanding principal amount owing under the contract which is the subject of Plaintiff’s complaint. Defendant further argues that this creates a jurisdictional defect because Plaintiff cannot demonstrate that this action seeks more than \$35,000 exclusive of fees, interest, and costs and therefore cannot maintain this action as an unlimited civil case. Defendant asks that the court terminate the application for attachment and reclassify the matter as a limited civil case.³

The May 17, 2024 Declaration of J.D. Pereira paragraph 3 states that as of that date, there was an outstanding principal balance of \$630 allegedly owed by defendant. Subsequently, on May 20, 2024 defendant made payment in the amount of \$630. (Corrected Decl. of Mason) As seemingly acknowledged by both parties, CCP 483.010(a) requires a \$500 minimum amount in order to satisfy the threshold requirement for an application for an order of attachment, which is exclusive of costs, interests and attorney’s fees. Following defendant’s May 20, 2024

¹ In *Murillo v. Toole* (1941) 47 Cal.App.2d 725, 730, the court used the fact that interest was not referred to in the affidavit, but recited to as part of the claim in the writ, as further proof that the attachment was invalid. The court held that discharging the writ was proper, absent a timely amendment making the writ and affidavit conform.

² In *O’Conor v. Roark* (1895) 108 Cal. 173, the case turned on the affidavit being defective and insufficient because the amount in the affidavit did not claim interest, while the amount in the complaint and the writ did. That court held that the statute requires the affidavit to specify the principal or amount of indebtedness, not the amount of the plaintiff’s demand in the complaint, which may include principal, interest and costs.

³ “[A] matter may be reclassified as a limited civil action when...during the course of pretrial litigation, it becomes clear that the matter will ‘necessarily’ result in a verdict below the superior court’s jurisdictional amount.” *Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 275 (internal quotation marks and citation omitted)

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payment of \$630, defendant argues there is no principal balanced owed to plaintiff and therefore plaintiff can no longer satisfy CCP 483.010. Since there is no principal balance owed to plaintiff, defendant contends that the case no longer satisfies the jurisdictional requirement of an unlimited civil case and must be converted to a limited civil case, pursuant to CCP 85.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, JUNE 21, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. 23CV0488 PETLEY v. LARSEN

TENTATIVE RULING #7:

AT THE REQUEST OF THE MOVING PARTY 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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8. 23CV0334 JANE DOE v. MOORE ET AL

Motion for Judgment on the Pleadings

Defendant Moore's motion is based on the argument that the Plaintiff is not authorized to pursue this lawsuit anonymously without leave of the court. Plaintiff counters that anonymity for parties has been upheld where there is an important privacy interest, as in this case, which involves allegations of sexual assault.

The Complaint, ¶ 3, represents that the Plaintiff will seek Defendant's agreement about entering into a protective order to prevent unnecessary disclosure of Plaintiff's real name in the public record. Plaintiff's Opposition to the motion states that Defendant is already aware of Plaintiff's identity, but the Declaration of Defendant's attorney Charles Raub filed in support of the motion states that as of April 19, 2024, Defendant does not know Plaintiff's identity and requires that information to prepare his defense. Declaration of Charles Raub, dated April 19, 2024, ¶9. Plaintiff's Declaration of Anthony Werbin, dated June 10, 2024, at ¶ 10 represents that Plaintiff's counsel disclosed Plaintiff's identity to Defendant's counsel on April 22, 2024.

Standard of Review

When a motion for judgment on the pleadings is made by a defendant, the court considers whether the complaint on its face states facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice.

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud*, at p. 999, 79 Cal.Rptr.2d 544.)

Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.

Defendant's statutory authority for the motion includes Code of Civil Procedure § 367 ("Every action must be prosecuted in the name of the real party in interest, except

as otherwise provided by statute”) and § 422.40 (“In the complaint, the title of the action shall include the names of all the parties; . . .”). Defendant argues that not naming the Plaintiff has the legal effect of failing to include an indispensable party in the action, citing Tracy Press, Inc. v. Superior Ct., 164 Cal. App. 4th 1290 (2008). The court notes that the Tracy Press case is distinguishable because it involved a defendant who was not named in the lawsuit, while in this case we must address the question of an anonymous Plaintiff.

There are two cases cited by the parties that directly address the issue of the anonymous plaintiff. Plaintiff relies on Doe v. Lincoln Unified Sch. Dist., 188 Cal. App. 4th 758 (2010), in which the court recognized a plaintiff’s ability to use a pseudonym to protect privacy, relying in part on federal case law. In that case, the defendants who argued that the plaintiff had no standing to sue under a fictitious name, failed to cite any authority for their position and so the court treated the legal argument as having been waived before the appellate court.

Defendant cites Dep’t of Fair Emp. & Hous. v. Superior Ct. of Santa Clara Cnty., 82 Cal. App. 5th 105 (2022). In that case, the court first noted that some statutes expressly allow a plaintiff to keep their identity confidential in certain specific situations, and also noted that in the absence of a statutory authorization “no California case has articulated the standard that applies to determine whether a party may proceed anonymously absent specific statutory authorization.” Id. at 110. The court proceeded to establish a standard for such cases. First, the court noted that there are due process issues if the defendant does not know the identity of the plaintiff. In this case it appears that the Plaintiff’s identify has been revealed to the Defendant as of April 22, 2024. Additionally, the court identified the right of public access to court proceedings as a guarantee of the First Amendment of the United States Constitution that includes a right to know the identities of the parties. Id. at 110-111. The court concluded that the trial court is required to hold a hearing to determine whether the public’s interest in access to court proceedings is overridden by a plaintiff’s interest in privacy, similar to closing the courtroom or sealing a court record.

Before a party to a civil action can be permitted to use a pseudonym, the trial court must conduct a hearing and apply the overriding interest test: A party's request for anonymity should be granted only if the court finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access.¹ In deciding the issue the court must bear in mind the critical importance of the public's right to access judicial proceedings. Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur “only in the rarest of circumstances.” (*KNBC, supra*, 20 Cal.4th 1178, 1226, 86 Cal.Rptr.2d 778, 980 P.2d 337.)

Dep't of Fair Emp. & Hous. v. Superior Ct. of Santa Clara Cnty., 82 Cal. App. 5th 105, 111–12 (2022).

The court in Dep't of Fair Emp. & Hous. v. Superior Ct. of Santa Clara Cnty set forth the same factors to be considered by a trial court considering the Plaintiff's request to pursue a case anonymously that were listed in the case of Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058 (9th Cir. 2000), as follows:

We join our sister circuits and hold that a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity. . . . The court must also determine the precise prejudice at each stage of the proceedings to the opposing party, and whether proceedings may be structured so as to mitigate that prejudice. *See James*, 6 F.3d at 240–41 (evaluating defendants' assertions that plaintiffs' use of pseudonyms would prejudice the jury against the defendants and would impair defendant's ability to impeach plaintiffs' credibility). Finally, the court must decide whether the public's interest in the case would be best served by requiring that the litigants reveal their identities. *See Stegall*, 653 F.2d at 185 (recognizing that “[p]arty anonymity does not obstruct the public's view of the issues joined or the court's performance in resolving them.”).

Does I thru XXIII v. Advanced Textile Corp., 214 F.3d at 1068–69.

“Procedurally, because a hearing is required, a party who wants to proceed anonymously will file the initial complaint or petition *conditionally* under a pseudonym and then move for an order granting permission to proceed that way. If the request is granted, the initial pleading can remain. If pseudonym use is denied, the pleading must be amended to state the party's true name.” Dep't of Fair Emp. & Hous., 82 Cal. App. 5th at 112 (emphasis in original). In this case, the motion before the court is for a judgment on the pleadings because there has been no prior judicial determination that the Plaintiff is authorized to proceed anonymously.

The court notes that another Defendant in the case has filed a motion to strike the Complaint based on the same arguments that have been made to support the judgment on the pleadings.

The parties are ordered to appear for the purpose of setting a date for a hearing on the issue, as the outcome of that hearing will be determinative of the two Defendant's pending motions.

TENTATIVE RULING #8:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 21, 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.

9. 23CV1434 BRIANT v. HARRISON ET AL

Demurrer

The original Complaint filed on August 23, 2023, alleges that Plaintiff fell and sustained injuries at Defendants' house on August 22, 2021. A First Amended Complaint ("FAC") was filed on February 22, 2024, which includes allegations related to the circumstances surrounding the filing of the original Complaint. The FAC alleges:

1. The pro se Complaint was electronically filed on August 22, 2023, through a document processing service and was rejected by the Clerk for the following stated reason: "Complaint pdf is missing. There are 2 Civil Case Cover Sheets." FAC, ¶¶ 15-16, Exhibit A.
2. Exhibit B to the FAC is a Declaration of James Lawyer (an Iowa attorney who is a friend of the Plaintiff), dated February 21, 2024, stating that on the same day that Plaintiff received notice of the rejection on August 23, 2023, he telephoned the Clerk's Office on Plaintiff's behalf to find out why the filing was rejected. According to the Declarant, during that conversation the Clerk indicated that in fact the Complaint had been included in the August 22, 2023, filing but that she could not reverse the August 22, 2023, rejection and that the documents would have to be refiled. Declaration of James Lawyer, dated February 21, 2024, ¶¶ 5-6, FAC Appendix B. Note that the FAC itself identifies the date of the telephone call with the Clerk's Office as having taken place on August 23, 2024. FAC, ¶¶ 17-18.

Based upon the August 23, 2023, filing date of the original Complaint, the Defendant demurs on the basis that the statute of limitations had expired when the Complaint was filed and, accordingly, the Complaint fails to state a cause of action pursuant to Code of Civil Procedure § 430.10(e). The statute of limitation for a personal injury action is two years. Code of Civil Procedure § 335.1.

Standard of Review

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

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

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 877 (1992).

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In this case, the FAC alleges that the Complaint was filed on August 22, 2023, and that it was rejected by the court Clerk on that date because the Complaint document was missing from the filing. FAC ¶¶15-16. This assertion is supported by FAC, Exhibit A, which is an official document of the court subject to judicial notice pursuant to Evidence Code § 452(c) and/or 452(d).

The FAC goes on to allege that on August 23, 2024 a non-party friend of the Plaintiff telephoned the Clerk's office and was informed that the Clerk's rejection of the filing was in error because the Complaint document was in fact included and so the Clerk filed the document effective August 23, 2024. FAC ¶¶17-18.

On its own motion, the court takes judicial notice of Exhibit A to the FAC and of the August 23, 2023, filing date stamp on the original Complaint.

While the court is bound to accept the facts pleaded in the FAC as true for the purpose of this motion, the facts that are set forth in the pleading merely establish that the Plaintiff attempted to file the Complaint on August 22, that the reason for rejecting the Complaint was explained over the telephone the following day, and that the Clerk's Office declined to file Complaint effective August 22 even though the Clerk "admitted that she had erred by rejecting" the filing. These facts do not lead to a legal necessity that the Complaint must be judicially deemed to have been filed as of August 22, 2023. In the context of a demurrer, contentions and conclusions of law are not deemed admitted by the demurring party. Moore v. Conliffe, 7 Cal. 4th 634, 638 (1994); Serrano v. Priest, 5 Cal. 3d 584, 591 (1971).

However, a clerical error might be addressed through a *nunc pro tunc* order.

[A]ll courts have inherent power to correct their records so that they will conform to the facts and speak the truth (Carter v. J. W. Silver Trucking Co., 4 Cal.2d 198, 47 P.2d 733); and that the power so to do may be exercised regardless of lapse of time, and that the order may be made ex parte by the court of its own motion (Kohlstedt v. Hauseur, 24 Cal.App.2d 60, 74 P.2d 314; Carpenter v. Pacific Mutual Life Ins. Co., 14 Cal.2d 704, 96 P.2d 796), or at the instance of an interested party (7 Cal.Jur. 614); also that the order may be made nunc pro tunc depending on the circumstances of the particular case, and is to be granted or refused as justice may require.

Wilson v. Nichols, 55 Cal. App. 2d 678, 681 (1942).

In the Wilson case the appellate court upheld the trial court's *nunc pro tunc* order which authorized the filing of a duplicate document to replace a document that had been lost by the court clerk and to deem it filed as of the same date that the lost original had been filed in order to preserve the rights of the parties.

TENTATIVE RULING #9:

- (1) THE COURT ON ITS OWN MOTION ENTERS A *NUNC PRO TUNC* ORDER THAT THE ORIGINAL COMPLAINT FILED IN THIS ACTION SHALL BE DEEMED TO HAVE BEEN FILED WITH THE COURT ON AUGUST 22, 2023.**
- (2) DEFENDANTS' DEMURRER IS OVERRULED.**

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.

**10. PC20210494 ALLIANCE ONE v. JODAR VINEYARDS ET AL
Order of Examination**

At the hearing on May 3, 2024, counsel indicated settlement was in progress and the hearing was continued to June 21, 2024.

TENTATIVE RULING #10:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 21, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. 22CV1698 G&L REAL ESTATE, INC. v. RICHARDSON

Order of Examination

Prior to the April 19, 2024 hearing for examinations, counsel for plaintiff requested a continuance due to difficulties effecting personal service on defendant judgment debtors. Pursuant to the Applicant and Order for Appearance and Examination, in order to ask the court to enforce the order on the judgment debtor or any third party, a copy of the order must be personally served on the judgment debtor by a sheriff, marshal, registered process server, or person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and the proof of service must be filed with the court. To date, service has not been effectuated.

TENTATIVE RULING #11:

HEARING IS CONTINUED TO FRIDAY, AUGUST 23, 2024 AT 8:30 A.M. 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.

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. 22CV1288 JOHN DEERE CONSTRUCTION & FORESTRY CO. v. CURTIS

Order of Examination

Pursuant to the Applicant and Order for Appearance and Examination, in order to ask the court to enforce the order on the judgment debtor or any third party, a copy of the order must be personally served on the judgment debtor by a sheriff, marshal, registered process server, or person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and the proof of service must be filed with the court. A proof of service was filed May 7, 2024 showing that a registered process server “drop served” papers at defendant J. Curtis’s feet on May 6, 2024. The process server also personally served defendant L. Curtis on May 6, 2024, which is stated on a separate proof of service also filed May 7, 2024.

TENTATIVE RULING #12:

APPEARANCES REQUIRED ON FRIDAY, JUNE 21, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.