06-28-24
Dept. 9
Tentative Rulings

1. **PC20210533 BROOKE D. v. EQUINE UNLIMITED INC. ET AL**

Compromise Minor's Claim

This is a Petition to compromise a minor's claim. The Petition states the minor sustained a broken arm and injuries and post-traumatic stress resulting from an equestrian accident in 2020. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $90,000.

The Petition states the minor incurred $25,178.14 in medical expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are not attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is not 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 $22,500, 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 non-medical expenses in the amount of $3,416.55. There are no copies of bills substantiating 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 $38,905.31 due to the minor, the Petition requests that they be deposited into single premium deferred annuity, subject to withdrawal with court authorization. See attachment 18(b)(3). 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).

In addition to curing the defects in the Petition identified above, the minor's presence at the hearing will be 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 #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 28, 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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2. 24CV0762 EL DORADO IRRIGATION DISTRICT v. SIERRA MOUNTAIN CONSTRUCTION

Motion to Transfer Venue

TENTATIVE RULING #2: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. THE MOTION TO TRANSFER VENUE IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 28, 2024, IN DEPARTMENT NINE TO IDENTIFY THE APPROPRIATE COUNTY TO WHICH VENUE SHOULD BE TRANSFERRED.

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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3. PC20200155 FOSTER v. LYON REAL ESTATE ET AL

Attorney's Fees

Defendant Griffin moves for award of attorney's fees and costs in the amount of $78,245.13, pursuant to Code of Civil Procedure §§ 1021, 1032 and 1033.5. Griffin was the seller of real property that was at issue in the litigation, which involved claims against the seller and the real estate agents and title company over the alleged failure to disclose to the buyers the existence of an easement attached to the property.

Those statutes relied upon by Defendant provide a right to recover attorney's fees as follows:

> Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

Code of Civil Procedure § 1021.

> (a) As used in this section, unless the context clearly requires otherwise:
>
> (1) "Complaint" includes a cross-complaint.
>
> (2) "Defendant" includes a cross-defendant, a person against whom a complaint is filed, or a party who files an answer in intervention.
>
> (3) "Plaintiff" includes a cross-complainant or a party who files a complaint in intervention.
>
> (4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.
>
> (b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Code of Civil Procedure § 1032(a)-(b).

Code of Civil Procedure § 1033.5 specifies categories of expenses that are recoverable as costs by a prevailing party, including any attorney fees that are awarded pursuant to Civil Code § 1717. Code of Civil Procedure § 1033.5(c)(5)(B).

Plaintiffs' action against Defendant Griffin consisted of causes of action for intentional failure to disclose material fact, negligent failure to disclose material fact, and breach of contract.

The applicable contract between the parties, a California Residential Purchase Agreement, provided: "In any action, proceeding, and arbitration between Buyer and Seller arising out of the Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A." Paragraph 22A required the parties to attempt mediation prior to initiating an action, which the parties did in this case. Declaration of Skylar Gray, dated May 6, 2024, ("Gray Declaration") ¶23.

Four years after the action was filed on March 13, 2020, the claims against Defendant Griffin were dismissed with prejudice on April 26, 2024, just a few weeks short of the trial date, at the request of Plaintiffs. The interim period included discovery, settlement negotiations and multiple pre-trial motions. Gray Declaration, ¶¶18.

Billing records are attached as Exhibit A to the Declaration of Keith Dunnagan, dated May 3, 2024, ("Dunnagan Declaration") and filed in support of the motion. A Memorandum of Costs totaling $2,639.63 is also on file with the court. The Gray Declaration additionally anticipates ten additional attorney hours, including drafting a Reply to the Opposition to the motion, and preparation for and attendance at the hearing on the motion.

Plaintiffs oppose the motion, citing Civil Code § 1717(b)(2)[1], which does not allow recovery of attorney's fees by a "prevailing party" where there is a voluntary dismissal by the plaintiff.

Plaintiffs further argue that the language of the contract authorizing the recovery of fees and costs is limited to contract causes of action arising from the contract and does not authorize recovery for fees and costs incurred in defending or pursuing tort-based claims. Defendant disagrees, arguing that Civil Code § 1717 only applies to contract claims and that, as to tort claims, the applicable standard is set out in the case of Santisas v. Goodin, 17 Cal. 4th 599, (1998).

[1] "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."
Civil Code § 1717(a).

"Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section."
Civil Code § 1717(b)(2).

Analysis

As a starting point, the rule is that recovery of attorney's fees is not available to a prevailing party except as provided by statute or contract. Code of Civil Procedure § 1021; Gray v. Don Miller & Assocs., Inc., 35 Cal. 3d 498, 504 (1984); Khan v. Shim, 7 Cal. App. 5th 49, 55 (2016).

It is clear that in this case Civil Code § 1717 does not provide statutory authorization for the recovery of attorney's fees because that statute expressly excludes recovery of fees in contract actions involving of voluntary dismissal. Civil Code § 1717(b)(2). Further, two of the three causes of action in this case are based on tort, not contract and so fall outside the scope of Civil Code § 1717. Stout v. Turney, 22 Cal. 3d 718, 730 (1978) ("A tort action for fraud arising out of a contract is not, however, an action 'on a contract' within the meaning of [Civil Code § 1717]."); *see also* Khan v. Shim, 7 Cal. App. 5th 49, 56 (2016).

However, the limitations of Civil Code § 1717 still leave the door open to the recovery of attorney's fees for tort actions. The case of Santisas v. Goodin, 17 Cal. 4th 599, (1998) regarding the recovery of attorney's fees in an action arising out of the California Residential Purchase Agreement, held that:

> [I]n voluntary pretrial dismissal cases, Civil Code section 1717 bars recovery of attorney fees incurred in defending contract claims, but that neither Civil Code section 1717 nor *Olen, supra,* 21 Cal.3d 218, 145 Cal.Rptr. 691, 577 P.2d 1031, bars recovery of attorney fees incurred in defending tort or other noncontract claims. Whether attorney fees incurred in defending tort or other noncontract claims are recoverable after a pretrial dismissal depends upon the terms of the contractual attorney fee provision.

Santisas v. Goodin, 17 Cal. 4th at 602.

And so the question before the court is whether the express language of the parties' agreement limits recovery of attorneys' fees to actions based on contractual claims, or if it can be interpreted to also provide for recovery of attorneys' fees on tort claims.

Xuereb v. Marcus & Millichap, Inc., 3 Cal. App. 4th 1338 (1992), also involved claims arising under a purchase and sale agreement for real estate. The trial court denied recovery of attorney's fees under the contract's provision for the reimbursement of fees to the prevailing party, which applied: "*if this agreement gives rise to a lawsuit or other legal proceeding*." The trial court reasoned that the claims were based solely on tort, not contract, and therefore were not recoverable under Civil Code § 1717. The appellate court reversed on the ground that Civil Code § 1021 authorized recovery of attorney fees that were provided for in the parties' agreement regardless of whether they were incurred with respect to tort or contract causes of action. The court held that "[t]he language of this provision does not limit an award of attorney fees to actions brought on a breach of contract theory, or to actions brought to interpret or

enforce a contract. . . . The language is broad enough to encompass both contract actions and actions in tort; . . .” Xuereb v. Marcus & Millichap, Inc., 3 Cal. App. 4th at 1342–43.

In the case of Lerner v. Ward, 13 Cal. App. 4th 155 (1993), the plaintiff sued on a fraud cause of action for false representations related to a real property transaction. Defendants prevailed and moved for attorney’s fees. The appellate court upheld the trial court’s refusal to award fees under Civil Code § 1717 because “a tort action for fraud arising out of a contract is not an action ‘on a contract’ within the meaning of Civ. Code, § 1717.” Lerner v. Ward, 13 Cal. App. 4th 155, 16 Cal. Rptr. 2d 486 (1993). However, the court held that the defendant could recover attorney’s fees as costs under Section 1021 based on the express language of the contract. The contract language in that case provided for recovery of attorney’s fees *“[i]n any action or proceeding arising out of this agreement . . . .”* Lerner, 13 Cal. App. 4th at 159. The court approved reimbursement of attorney’s fees under Section 1021 because “[t]he clause was not limited merely to an action on the contract, but to *any action or proceeding arising out of the agreement*. This included any action for fraud arising out of that agreement.” Id. at 160 (emphasis added).

In Khan v. Shim, 7 Cal. App. 5th 49 (2016) the pertinent contract language allowed the prevailing party to be awarded fees if “*any litigation ... is commenced between the parties to this Contract of Sale ... concerning its terms, interpretation or enforcement or the rights and duties of any party in relation thereto....*” Khan v. Shim, 7 Cal. App. 5th at 53 (emphasis added). In that case the court concluded that the tort claims “easily [fell] within the reach of the fee provision covering ‘any litigation ... concerning [the contract's] terms....’” Id. at 62.

In this case, the applicable contract language states: "*In any action, proceeding, and arbitration between Buyer and Seller arising out of the Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller*, except as provided in paragraph 22A.”

Plaintiffs argue that this contract language should be read to be limited to contract causes of action arising from the contract and does not authorize recovery for fees and costs incurred in defending or pursuing tort-based claims. Defendant disagrees, arguing that the case law supports an interpretation of the language to include both contract and tort-based claims.

The court finds that, consistent with the applicable case law, the contract language is not limited to contract claims, but also authorizes recovery for tort-based claims arising from the parties’ contract.

Plaintiffs argue that in the event that the contract language is found to cover both tort and contract claims, Civil Code § 1717 prohibits recovery for those fees attributable to the contract claims because of the voluntary dismissal. Defendant counters that because all causes of action arise out of the same conduct it is not necessary to parse fees for each type of claim, to

which Plaintiffs respond that if the causes of action are in fact indistinguishable as between tort and contract, then they must all come within the scope of Civil Code § 1717 and thus no fees are recoverable.

The court disagrees. As the tort claims and the contract claims are all based on the same conduct (the failure to disclose the existence of an easement), then the fees may be recoverable costs incurred with respect to tort claims even though they also may be framed as a breach of contract.

Finally, Plaintiffs argue that the amount of fees requested is unreasonable, with claims of 262.9 hours of work between nine attorneys, citing selected examples of duplicative billing entries:

- November 23, 2022: SE; bills for proposed order for publication which appears to be unrelated to this case;
- December 12, 2022: SEG billing for duplicative work;
- March 15, 2024 (erroneously listed as March 15, 2023 on the billing records): lists excessive hours (7.2 hours) for two attorneys to attend a hearing on a good faith settlement motion and a site visit to Plaintiffs' home.

Plaintiff further challenges the memorandum of costs because 1) supporting documents are conflicting as between Exhibits C and D of the Dunnagan Declaration; 2) mediation fees are not recoverable costs under the contract pursuant to paragraph 22A, which provides that such costs are to be divided equally among the parties.

TENTATIVE RULING #3: DEFENDANT'S MOTION FOR ATTORNEY FEES AND COSTS IS GRANTED. THE COURT TAKES THE DETERMINATION OF AMOUNT OF FEES AND COSTS UNDER SUBMISSION.

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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. 23CV1890 MURATORI ET AL v. TURNER ET AL

Attorney's Fees

This action was brought against three named Defendants, including Defendant Langford. A Request for Default was filed on January 9, 2024, and default was entered on February 20, 2024.

On March 4, 2024, Defendant Langford retained counsel, who asked Plaintiff's counsel to stipulate to setting aside the default, but was refused. Declaration of Kevin Rooney, dated June 14, 2024, ¶¶ 10-13. The motion to set aside the default was filed on April 1, 2024, and Plaintiffs filed an opposition to the motion on April 15, 2024, which included a request for reimbursement of fees and costs in the amount of $16,636.52, "or at least 50% of this amount totaling $8,318.26". Id. at ¶ 15, Exhibit. G at 9:11, fn. 1. Defendant Langford's Reply indicated a willingness to reimburse a proportional amount based on the number of claims in which he is named. During the meet and confer efforts between the parties, Plaintiffs' counsel agreed to reduce the claimed fees and costs to approximately $8,000, including fees incurred in unsuccessfully opposing the motion to set aside the default, but the parties were unable to agree on this amount.

Following a hearing on April 26, 2024, the court granted Defendant Langford's motion to set aside the default and set a hearing on attorney's fees. In anticipation of that hearing Plaintiffs filed a request for reimbursement of $7,533 in attorney's fees and costs. Defendant Langford does not oppose the award of some fees and costs, but argues that the majority of the claimed fees were incurred in unsuccessfully opposing Defendant's motion to set aside a default.

Defendant Langford does not oppose reimbursement of $1,552 of fees and costs incurred in obtaining the default for his non-appearance. However, he opposes recovery of $5,981 of fees and costs incurred after obtaining the default, including $2,700 in opposing the motion to set aside, $1,594 for hearing the motion to set aside, and $150 for filing an application for judgment debtor examination that was filed after Plaintiffs' counsel had been contacted by counsel for Defendant Langford requesting a stipulation to set aside the default.

Langford cites Rogalski v. Nabers Cadillac, 11 Cal. App. 4th 816 (1992), in which a trial court's refusal to set aside a default was reversed. During the appeal the court noted that Code of Civil Procedure § 473 allows a trial court discretion to impose conditions on the set aside of a default that it deems proper, and asked plaintiff/respondent what conditions he would request be imposed. His response was that he should be reimbursed all attorney's fees and costs, including those incurred after obtaining the default. The appellate court balked at that request, noting that the defendant should not be required to bear "the entire economic burden of prosecuting a motion which should have been granted . . . ." Rogalski, 11 Cal. App. 4th at 823. The court remanded with instructions that only fees and costs incurred in obtaining the defaults should be

charged to the defendant/appellant. In that case, as in this one, plaintiff's counsel had been contacted by defendant's counsel soon after the default was entered and the motion to set aside was filed promptly after plaintiff declined to agree to stipulate to the set-aside. As the court in Rogalski noted, "[h]ad Rogalski stipulated to set aside the defaults, none of the alleged prejudice would have resulted." Id. at 822.

The court agrees that fees and costs incurred in obtaining the default that was required as a result of Defendant Langford's failure to respond to the Complaint should be reimbursable, but not the fees and costs incurred in unsuccessfully opposing the set-aside motion where Plaintiffs had an opportunity to avoid those costs by stipulation.

TENTATIVE RULING #4: PLAINTIFF IS AWARDED ATTORNEY'S FEES AND COSTS IN THE AMOUNT OF $1,552.

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. 24CV0053 GRAY v. ZBS LAW LLP

Preliminary Injunction

On January 11, 2024, this pro per action was filed against Defendants ZBS Law LLP and Shell Point MTG Servicing dba Newrez LLC, but does not contain any stated cause of action or any prayer for relief. There is no proof of service of the Summons and Complaint on any Defendant, and there is no Answer on file with the court.

At a hearing on February 7, 2024, the court denied Plaintiff's ex parte application for a writ of possession.

Plaintiff filed this motion for preliminary injunction on May 13, 2024 which does not contain any argument or specify the nature of the injunction requested, but requests a set aside of a judgment in Case No. 24UD0044.

TENTATIVE RULING #5: THE MOTION FOR PRELIMINARY INJUNCTION 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).

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6. PC20210340 SCHNEIDER v. SCHNEIDER ET AL

Set Aside Default Judgment

Complaint and Entry of Default

Plaintiff Tiffany Schneider filed a Complaint on July 6, 2021. Proofs of service of the Summons and Complaint on Defendants Debbie Schneider and Richard Schneider were filed with the court on August 26, 2021, indicating personal service on August 18, 2021. Proof of service of the Summons and Complaint on Nathan Schneider was filed on October 28, 2024, indicating personal service on July 14, 2021.

Default judgment was entered as to Defendants Debbie Schneider, Richard Schneider and Nathan Schneider on January 5, 2022.

Cross-Complaint and Entry of Default

Cross-Complainant Tiana Schneider filed a Cross-Complaint on February 13, 2024, against Cross-Defendants Debbie Schneider, Richard Schneider and Nathan Schneider. Proof of service of the Cross-Complaint was filed on April 4, 2024.

A default was entered as to Cross-Defendant Nathan Schneider on May 8, 2024. A request to enter default as to Cross-Defendants Debbie Schneider and Richard Schneider was denied because they had filed a response to the Cross-Complaint on May 3, 2024.

Set-Aside Motions

On May 3, 2024, Defendants Debbie Schneider and Richard Schneider filed a motion to set aside the January 5, 2022, default, stating that they became aware of the default on April 23, 2024, and had understood that they could respond to the Complaint during mediation.

On May 31, 2024, Cross-Defendant Nathan Schneider filed a motion to set aside the May 8, 2024, default related to the February 13, 2024, Cross-Complaint, stating that he had understood that they could respond to the Complaint during mediation.

On June 17, 2024, Defendant Nathan Schneider filed a motion to set aside the January 5, 2022, default related to the July 6, 2021, Complaint, stating that he became aware of the default on April 23, 2024, and that he had understood that he could respond to the Complaint during mediation.

Standard of Review

Code of Civil Procedure § 473(b) governs the set aside of defaults:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him

> or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. . . . .

Code of Civil Procedure § 473.5 further 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.

As to the January 5, 2022, default related to the Complaint, both the six-month deadline under Section 473(b) and the two-year deadline expressed in Section 473.5 have expired. Accordingly, there is no authority for the court to set aside those defaults.

As to the May 8, 2024, default related to the Cross-Complaint entered against Nathan Schneider, the set-aside request is timely, and includes a proposed Answer to the Cross-Complaint and a declaration indicating that the failure to respond was a mistake.

> [B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite* v. *Southern Pacific Co*. (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233 (1985).

TENTATIVE RULING #6:

1. **DEFENDANTS' MOTIONS TO SET ASIDE THE JANUARY 5, 2022 DEFAULT AS TO THE COMPLAINT IS DENIED.**
2. **CROSS-DEFENDANT'S MOTION TO SET ASIDE THE MAY 8, 2024, DEFAULT AS TO THE CROSS-COMPLAINT IS GRANTED. CROSS-DEFENDANT SHALL FILE AN ANSWER TO THE CROSS-COMPLAINT WITHIN TEN DAYS OF THIS ORDER.**

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.

7. PC20200294 ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD

Motions for Summary Judgment

The Motions are addressed as follows:

- 7a: GDRD'S Motion for Summary Adjudication
- 7b: Byrd/Wilson Motion for Summary Judgment or Alternatively, Summary Adjudication against GDRD
- 7c: Byrd/Wilson Motion for Summary Judgment or Alternatively, Summary Adjudication against All About Equine

7a: GDRD'S Motion for Summary Adjudication

Plaintiff, Georgetown Divide Recreation District ("Plaintiff" or "District" or "GDRD"), brings a Motion for Summary Adjudication on the First Cause of Action for Quiet Title and Second Cause of Action for Declaratory Relief of Defendants, Alexander Byrd, Maynard Byrd, Debra Byrd, Laura Byrd Rodarte, Joshua Rodarte, Terry Wilson and Dawn Wilson ("Defendants"), filed on April 11, 2024.

Request for Judicial Notice

District has filed a request for the court to take judicial notice of documents filed with the Secretary of State, various deeds, pleadings, and numerous county ordinances.

Defendants object to the court taking judicial notice of Plaintiff's First Amended Complaint, however, it is appropriate for the court to take judicial notice of pleadings on file with the court even though it may not accept the truth of the documents. Further, defendants themselves submit the First Amended Complaint with their own request for judicial notice.

Defendants' objection is overruled.

With the filing of their opposition, Defendants request that the court take judicial notice of several deeds and documents on file with the Recorder's Office, pleadings, acts of the County, and ordinances.

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 "regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States"; "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States"; "records of (1) any

court in this state or (2) any court of record 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)-(e), (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.

Both parties also request that the court take judicial notice of deeds. *Ragland v. U.S. Bank Nat'l Assn.*, 209 Cal. App. 4th 182, 194, (2012) ("A recorded deed is an official act of the executive branch, of which this court may take judicial notice. (Evid. Code, §§ 452, subd. (c), 459, subd. (a); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, 33 Cal.Rptr.2d 646; *Cal–American Income Property Fund II v. County of Los Angeles* (1989) 208 Cal.App.3d 109, 112, fn. 2, 256 Cal.Rptr. 21.")

Accordingly, both Requests for Judicial Notice are granted.

Standard of Review

"A party may move for summary adjudication as to one or more causes of action within an action,…if the party contends that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action…. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, or an affirmative defense…." (Code Civ. Proc. §437c(f)(1).)

Weiss v. People ex rel. Department of Transportation, 9 Cal. 5th 840, 265 Cal. Rptr. 3d 644, 468 P.3d 1154 (Cal. 2020) ("Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party").

Plaintiff's Burden of Proof

A plaintiff…has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant… to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant…shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. (Code Civ. Proc. §437c(p)(1).

Quiet Title & Declaratory Relief

In a suit to quiet title, all that is required is that an owner of real property allege and subsequently prove that the defendants' adverse interest in the property is wrongful. (See,

Williams v. City & County of San Francisco (1938) 24 Cal.App.2d 630, 633; *Lucas v. Sweet* (1956) 47 Cal.2d 20, 22.) Similarly, "[t]he fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; see Code Civ. Proc., §§ 1060, 1061.)

Defendants agree with the standard of review on summary adjudication and quiet title in Plaintiff's Motion.

Arguments

1. If Easement Exists, It Is Unperfected

The parties dispute the perfection of the reserved easement. If the easement has been perfected, the parties dispute its precise location and dimensions along with District's ability to use a gate and fence to protect its property.

a. Interpretation of Grant Deeds

"Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this Article." (Civ. Code, § 1066.) "The construction of a deed should be according to the entire instrument…." (*Castro v. Tennent* (1872) 44 Cal. 253, 254.) "In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply. If the language is clear and explicit in the conveyance, there is no occasion for the use of parol evidence to show the nature and extent of the rights acquired." (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702.) Plaintiff does not further develop this argument beyond the standard.

Defendants respond that the grant deeds should be interpreted in Defendants' favor. "It is well settled that a deed indefinite in its terms may be made certain by the conduct of the parties acting under it." (*People v. Ocean Shore Railroad* (1948) 32 Cal.2d 406, 414.) The 1977 Deed reserved an easement through the GDRD Property and states that the easement is "located generally" north of the existing "Bayley House Barn" (not the Bayley Barn). (SSMF, ¶ 3-5) That deed further details how the location of the easement is to be determined, but Defendants argue that the conduct of the parties has established the easement location.

The Parcel Map and the Record of Survey, both recorded with El Dorado County, provide the location of the easement where Bayley Lane is now located; the Record of Survey also provides the width of the easement. (AMF ¶¶ 5-7) The notes of the Record of Survey state that "the only access across said parcel with an encroachment to Highway 49 aerial photos of the last 30 years show no other location." (AMF, ¶ 8) These public records show that as of 2021 when the Record of Survey was created, the easement's location had been fixed on Bayley Lane for 30 years. Therefore, the parties currently acting under the 1977 Deed and their predecessors have established the easement's location on Bayley Lane and its width at fifty feet.

Plaintiff has acknowledged and ratified the roadway in a new deed that references the Record of Survey. Plaintiff signed an Easement Grant Deed recorded on April 12, 2023, ("New Easement") to Defendant All About Equine Animal Rescue, Inc. ("AAE"). (AMF, ¶ 9.) The New Easement grants AAE an easement with a centerline depicted on the Record of Survey. (AMF, ¶ 9.) Although Plaintiff claims to take issue with the Record of Survey, Plaintiff relied on it to grant AAE an easement where it claims there is no easement, thereby acquiescing to its existence and location.

A reservation in any grant is to be interpreted in favor of the grantor. (Civ. Code § 1069.) "Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this Article." (Civ. Code § 1066; see also *Machado v. S. Pac. Transp. Co.* (1991) 233 Cal.App.3d 347, 352.) California law establishes that forfeitures are disfavored and trial courts must adopt an interpretation of a contract provision that avoids a forfeiture. (*Nelson v. Schoettgen* (1934) 1 Cal.App.2d 418, 423). "The burden is upon the party claiming a forfeiture to show that such was the unmistakable intention of the instrument." (*Id.*)

In addition, interpreting the deeds in a way that results in forfeiture might mean that the title companies will face claims, and the banks' notes and deeds of trust are invalid. Accepting Plaintiff's interpretation that the easement is unperfected and thus does not exist might also effectuate a taking of Defendants' property rights without just compensation.

b. <u>Reserved Easement Unperfected</u>

District alleges that the Reserved Easement in the 1977 Grant Deed is conditional upon satisfaction of specific terms and conditions – "the exact location of such easement shall be precisely determined upon arrival by the El Dorado County Planning Commission and the El Dorado County Board of Supervisors…." The location has not been approved. (SUF 5, 7)

The 1990 Grant Deed was a complete transfer to District of the property, in fee simple absolute. Any rights held by the County in the 1977 Grant Deed transferred to District. (See, Civ. Code § 1084 ("The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.") District has not approved the location of the easement. (SUF 8)

Defendants respond that the reserved easement has been perfected. Plaintiff has held the position that the 1990 Deed was a complete transfer to Plaintiff of the GDRD Property and all rights, obligations, and burdens thereto in fee simple absolute. Plaintiff claims that because the County did not approve the exact location of the easement while it owned the property, any rights the County held by way of the 1977 Deed are now the rights of the District. (See, Civ. Code § 1084 ("The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.") However, a "thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or

across the land of another." (Civ. Code § 662; see also *Moylan v. Dykes* (1986) 181 Cal.App.3d 561, 568 ["The conveyance of the dominant tenement transfers all appurtenant easements to the grantee, even though the easements are not specifically mentioned in the deed."]) The right to approve the exact location of the easement cannot be said to be something that is "by right used with the land for its benefit" as in the case of the use of an easement by a dominant tenement owner. (See Civ. Code § 662.) Therefore, this right is not incidental to the land, and the right to approve the exact location of the easement did not automatically transfer to Plaintiff. Further, because GDRD has restrictions on its use, County of El Dorado retained a reversionary interest. (See Civ. Code § 768)

i. <u>2011 Map Did Not Perfect Easement</u>

District alleges that the 2011 Parcel Map was a boundary line adjustment that didn't involve District property boundaries. Boundary line adjustments do not go to the Board of Supervisors or the County Planning Commission; they do not have the same notification requirements as parcel maps and do not go through due process. (SUF 51, 52) The 2011 Parcel Map did not divide any existing properties. District was not provided notice – notice is only provided to landowners whose boundaries are being revised. (SUF 53) The 2011 Parcel Map was approved by the Planning and Building Director, and only surveyed the District property at its north and west boundaries. (SUF 59) The 2011 Parcel Map didn't survey the location of the reserved easement and didn't survey GDRD property, which was cut out of the map. (SUF 59-60). It does not show any of the relevant reference points for establishing the easement location – Bayley Barn, toe of the knoll. To the extent the 2011 Parcel Map identifies any easement on GDRD property, the dotted lines across the District's property are identified as "ROAD AND UTILITY EASEMENT PER 1467/463 O.R." (SUF 54) Book 1467 at page 463 is the 1977 Grant Deed. (SUF 3-5) As such, any easement is subject to the to the terms and conditions of the deed which require that it be north of the Bayley Barn and south of the toe of the knoll which contains the Bayley grave sites.

District alleges the 2011 Parcel Map does not support the contention that the easement is 50 feet wide. The 2011 Parcel Map also fails to support Defendants' contention that the claimed easement through the GDRD's property is 50 feet wide. The description distinctly omits any width of the road and utility easement that traverses GDRD property which is the only easement addressed in the 1977 Grant Deed. By definition, that reserved easement ends at the western edge of the GDRD property. By contrast, the easement to the west of the GDRD's property is described differently without any reference to the 1977 Grant Deed. That easement, which again is not on GDRD property, is the only place a 50-foot width is noted. Therefore, to the extent there is a reserved easement on GDRD property, it is not 50-feet wide.

Defendants respond that the easement's existence and location has already been approved by the County. A Parcel Map was recorded in the Official Records of El Dorado County on October 31, 2011, in Book 50 of Parcel Maps at Page 128 ("Parcel Map"). (AMF, ¶ 5.) The

Parcel Map delineates the location of the easement where Bayley Lane is located today. (AMF, ¶ 5.) Robert Peters was deposed as the person most knowledgeable about gate permits, permitting applications, gate and easement violations, and requirements for easements across the GDRD Property. (AMF, ¶ 15.) During his deposition, Robert Peters was asked, "In general, in your duties in your job position and your previous positions with the County, would either a parcel map or a regular survey satisfy the recording requirements to locate the exact location of an easement?" Robert Peters responded, "Generally, yes." (AMF, ¶ 16.) The Parcel Map depicts a "50.00' wide road & public utilities easement." (AMF, ¶ 5.) Robert Peters was asked whether, in general, parcel maps necessarily have to be approved by the County of El Dorado in order for them to be recorded, and he responded, "Yes, they would be approved by the County." (AMF, ¶ 17.) The Parcel Map was recorded in El Dorado County, which means that it necessarily had to be approved by the County of El Dorado. To confirm, County Surveyor Philip Mosbacher emailed Defendant Alexander Byrd and wrote that a fifty-foot-wide road and public utility easement was created across the GDRD Property when the Parcel Map was recorded. (AMF, ¶ 18.)

Plaintiff argues that the 1990 Grant Deed transferred the property to GDRD in fee simple subject to condition subsequent, with the County retaining the right to terminate GDRD's fee estate if it ceases to operate as a park district. (*Severns v. Union Pac. RR* (2002) 101 Cal.App.4th 1209, 1216; *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 126.) This transferred all the rights and privileges as would a transfer in fee simple absolute; the grantee takes the entire estate of the grantor and, unless the grantee breaches the condition, remains in the same position as an owner in fee simple.

ii. <u>2021 Record of Survey Did Not Perfect Easement</u>

The 2021 Record of Survey is not an approval of the location of the reserved easement. Records of Survey are recorded, but not approved by the county and do not go through the process that applies to approval of parcel maps. (SUF 61-62) District alleges the 2021 Record of Survey admits the location of the reserved easement is unknown, and only places it at the Dirt Road because the road is there. (SUF 62)

Defendants' response is included above in section 1.b.i.

iii. <u>Easement Cannot Be Perfected by Prescriptive Rights</u>

District alleges the easement cannot be perfected by prescriptive rights because the property is owned by a local government entity, relying on *People v. Shirokow* (1980) 26 Cal.3d 301, 311. However, that case is distinguishable because the Court focused on the fact that the challenge in that case was to the government's interest in *regulating* the use of public waters, not any *proprietary* interest in the water. (emphasis added) Plaintiff further argues that acquiring such interest is expressly prohibited under Civil Code §1007.

Further, there could be no pre-existing easement prior to A&B's 1977 transfer to the County because A&B could not create an easement in favor of itself on its own property before the transfer. The dominant and servient tenements required for an easement are created as part of the transfer. (*Kytasty v. Godwin* (1980) 102 Cal.App.3d 762, 773 ["One cannot have an easement on his own property."]; Civ. Code, § 805 ["A servitude thereon cannot be held by the owner of the servient tenement."] Civ. Code, § 803 ["The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement."].) Plaintiff states that if Defendants have any easement, it can only be north of Bayley Barn and not at the Dirt Road.

District cites *Kytasty v. Godwin,* (1980) 102 Cal.App.3d 762, 771, for the contention that "one cannot have an easement on his own property." However, in that case the court upheld an implied easement because the landowner was well aware of the existence of the road and was put on notice of an easement. Kytasty could see the road, knew it had been graded and paved, used the road herself, and knew it continued on although she never traveled the full length. The court continued by referring to Civil Code §1104, noting that the scope of an easement acquired by implied grant is measured by "the extent the property was obviously and permanently *used* at the time when the transfer was completed." *Id.*

Defendants respond that Plaintiff's own motion admits Defendants were provided with the combination to the gate lock, which serves as an admission by Plaintiff that Defendants have access rights through Bayley Lane. "Some expressly granted easements—commonly known as "floating easements"—are not specifically defined as to location by the creating conveyance. Such easements are nonetheless fully valid and enforceable by their holders." (*Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 823 [citation omitted].) However, in that case, the deed conveyed an easement with "free access."

"An easement granted in general terms, nonspecific as to its particular nature, extent or location, is, as mentioned above, perfectly valid. It entitles the holder to choose a 'reasonable' location . . . The use actually made by the holder over a period of time fixes the location . . ." (*Colvin v. S. Cal. Edison Co*. (1987) 194 Cal.App.3d 1306, 1312, abrogated on other grounds in *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1106–1108.) In *Calvin*, the case involves personal injury and premises liability, but the court discussed differences between a license and an easement. Pertinent to this case, the court stated that a license "differs from an easement in that it is revocable." *Id.* at 1307.

"The use of the easement in a particular course without objection by the owner of the servient tenement establishes [or fixes] the easement along the route used. Once that occurs, the easement's location is no longer floating and cannot be altered without the parties' consent." (*Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 825 [citation omitted].) "Where the right of way has been used at a particular location with the acquiescence of the servient owner, the parties have, in effect, placed their own practical construction upon

the grant, and the easement will be regarded as fixed at that place. . . . and the grantor has no right either to hinder the grantee in his use of the way or to compel him to accept another location, even though a new location may be just as convenient." (*Youngstown Steel Products Co. v. Los Angeles* (1952) 38 Cal.2d 407, 410.) That case involved electrical wires above the grantor's land and while the height was not initially an issue, the grantor later acquired a crane that could reach that high and could come into contact with the wires.

The use actually made by the holders over a period of time, with the acquiescence of the servient owners, has fixed the location of the easement along the route used— Bayley Lane. As discussed above, as of 2021 when the Record of Survey was created, the easement's location had been fixed on Bayley Lane for 30 years. GDRD's general manager, Jacqui Brunton, has acknowledged the existence of the easement. (AMF, ¶19)

iv. <u>Road Naming Did Not Perfect Easement</u>

District alleges that the County's approval of defendant's road naming is done pursuant to ordinance only and makes no consideration to any property rights. (SUF 63-65, 68)

Defendants respond. Jane McClusky, County Survey Technician, sent an email to Defendant Alexander Byrd and Jacqui Brunton in which she made it clear that a Road Name Petition requires that the road or easement be part of a Record Map or Assessor's Map that accurately plots the exact road alignment. (AMF, ¶ 20.) Ms. McClusky recommended that Defendant Alexander Byrd hire a surveyor to file for a Record of Survey that defines the location of the existing road. (AMF, ¶ 21.) Subsequently, El Dorado County Surveyor's Office issued a Road Name Petition Approval to Defendants Maynard and Debra Byrd, and Laura and Josh Rodarte informing them that their Road Name Petition for Bayley Lane was approved. (AMF, ¶ 23.) Necessarily, the County had to find that the Record of Survey accurately plots the exact alignment of Bayley Lane for the Road Name Petition to be Approved. Ms. Brunton forwarded the email from Ms. McClusky to Defendant Alexander Byrd and others on or about August 27, 2020, and wrote "A Record of Survey needs to be filed to determine the exact location of said easement. . . . The Process moving forward is spelled out, highlighted below." (AMF, ¶ 22.) By referring Defendants to this recommendation, Plaintiff's agent acquiesced to a Record of Survey to determine the easement's exact location.

While Plaintiff argues that the approval of the road naming petition is simply means to name a road, Defendants note that Plaintiffs previously equated the approval to an inverse condemnation. In a letter dated April 4, 2022, El Dorado County Surveyor's Office issued a Road Name Petition Approval to Defendants Maynard and Debra Byrd, and Laura and Josh Rodarte. (AMF, ¶ 23.) The letter informed them that their Road Name Petition for Bayley Lane had been approved. (AMF, ¶ 23.) By Plaintiff's own reasoning, this approval amounted to an inverse condemnation of Bayley Lane. The Record of Survey and the approval of the Road Name Petition

were acts of the County that marked the approval of the location of the easement, acts which Plaintiff never challenged in court and is now precluded from challenging.

GDRD replies that the road naming petition is a ministerial act, not in any way determinative of property rights.

2. <u>Reserved Easement Can Only Be Perfected North of Bayley Barn</u>

District alleges that the 1977 Grant Deed makes it clear that the location of the reserved easement is North of the Bayley House barn and South of the toe of the knoll containing grave sites. (SUF 3-5) The Dirt Road is located south of Bayley Barn. (SUF 37)

In response to Plaintiff's argument that the easement, if it exists, is not 50-feet wide, Defendants cite to El Dorado County Code section 120.44.120. That section provides in relevant part, "All design criteria and improvements made or installed in conjunction with the approval of a tentative parcel map shall conform to the standards and specifications contained or referred to in the Subdivision Design and Improvement Standards Manual . . . A 50-foot minimum width on-site public road and utility easement shall be irrevocably offered for dedication to the County to serve all parcels being created. Such easement may be extended, at the County's discretion, to the limits of the property in order to provide an orderly vehicle circulation system to and for adjacent properties." (AMF, ¶ 29) Plaintiff argues that it is illogical for the easement on GDRD property to accommodate one lane traffic and then open up to additional lanes once it reaches the adjacent property.

Plaintiff takes issue with Bayley Lane being south of the "Bayley Barn," but the 1977 Deed stating that the easement shall be north of the "Bayley House Barn." Defendants point out several potential locations for where the Bayley House Barn could have been or may have been moved.

The Cultural Resources Assessment also has a Description of Cultural Resources, and the description of the barn states, "The existing barn located in the Bayley House Historic Park was built in the 1940s and moved from the east side of State Route 49 outside the park boundary to its present location around 1979- 1980." (AMF, ¶ 36.) Additionally, a Primary Record was created for Bayley House and Bayley House Barn which states that the barn was relocated/rebuilt around the 1980s. (AMF, ¶ 38.) Therefore, the barn referenced in the 1977 Deed is not the current structure referred to as the Bayley House Barn, since the present barn might not have been moved to its present location until 1979. Obviously, the easement cannot go north of a barn that did not exist at the time the 1977 Deed was created.

Moreover, there might have been multiple barns on the GDRD Property at the time the 1977 Deed was executed. A Nomination Form to the National Register of Historic Places Inventory was submitted for the Bayley Hotel, and the description section states, "There are

numerous barns, sheds, and outbuildings scattered about…" Even what Plaintiff refers to as the equipment shed could have been identified as a barn at one point. (AMF, ¶ 40.)

Plaintiffs argue that the easement should be north of the current Bayley Barn is located, but that is where Plaintiff has built a playground. Defendants note that a road in that location would require Plaintiff to demolish the playground.

3. Single Gate and Parallel Fencing Do Not Unreasonably Interfere

If the court determines that the reserved easement was perfected at the current location of the Dirt Road, District's single gate and lock do not unreasonably interfere with the easement's purpose to provide access, utilities and other services. (SUF 5, 40-44)

The law is well established that "[t]he owner of the dominant tenement must use his or her easements and rights in such a way as to impose as slight a burden as possible on the servient tenement [citations omitted] [and] [e]very incident of ownership not inconsistent with the easement and the enjoyment of the same is reserved to the owner of the servient estate." (*Scruby v. Vintage Grapevine, Inc.,* 37 Cal.App.4th 697, 702.) Further, "[t]he owner of the servient estate may make continued use of the area the easement covers so long as the use does not 'interfere unreasonably' with the easement's purpose." (*Id.* at 702-703.) The dominant tenement does not have an absolute right to use each and every inch of the easement area. (*Id.* at 706. In *Scruby*, the facts are very different from the present case. In that case, the plaintiffs used a 15-foot wide area of the 52-foot wide easement for ingress and egress, and admitted that the alleged encroachments did not block their access to the property. *Id.* at 698.

District also cites *Heath v. Kettenhofen* (1965) 236 Cal.App.2d 197 regarding unreasonable interference. That case also includes testimony by the plaintiff that showed defendant's placement of a barricade had no affect on plaintiff's enjoyment of their right to the easement. *Id.* at 204-205. Similar to *Scruby*, the facts from *Heath* are distinguishable from the present case.

To further support its right to place a gate and fencing, District notes that courts "recognize that unless it is expressly stipulated that the way shall be an open one, or it appears from the terms of the grant or the circumstances that such was the intention, the owner of the servient estate may erect gates across the way, if they are constructed so as not unreasonably to interfere with the right of passage." (*Van Klompenburg v. Berghold* (2005) 126 Cal.App.4th 345, 350 quoting *McCoy v. Matich* (1954) 128 Cal.App.2d 50, 53 [internal quotations omitted].) Whether District's gate and fence unreasonably interfere with Defendants' use is in dispute.

Defendants address the cases cited by Plaintiff and attempt to distinguish all of them. In addition to the court in *Heath* finding that plaintiffs in that case were not affected by defendant's easement use, Defendants here note that the *Heath* court found the defendant's erection of the fence would cause irreparable damage to plaintiffs. *Id.* at 202 and 205.

There is a dispute as to whether GDRD's fence and gate unreasonably interfere with defendants' access. Defendants argue that the gates at issue here have unreasonably interfered with Defendants' right of passage. The gates also obstruct fire apparatus access. An Initial Study, Environmental Checklist was prepared for the GDRD Property. (AMF, ¶ 46.) In a section addressing environmental impacts on traffic, it was made very clear that "The Fire District requires unobstructed widths of the apparatus access roads." (AMF, ¶ 46.) By installing a gate across Bayley Lane, Plaintiff has created an obstruction.

Defendants go on to argue that Plaintiff's gate is a spite gate and was only placed once the dispute arose. There is a dispute as to whether the gate is necessary to protect against vandalism.

a. <u>GDRD Is Exempt from County Gate Ordinance</u>

District alleges it is exempt from the County gate ordinance, which generally requires an administrative permit before a gate can be placed across property. The ordinance and Government Code §53090 allow District to be considered a local agency. (SUF 69)

El Dorado County Code 130.30.090.C requires an administrative permit to erect gates across non-county-maintained roads within a residential subdivision consisting of two or more lots. (AMF, ¶ 3.) The County of El Dorado issued an Administrative Order dated April 9, 2021, involving Defendant AAE. (AMF, ¶ 47). At issue was the lack of a permit for gating installed across Bayley Lane, which also runs through AAE's property. (AMF, ¶ 47). The Administrative Hearing Officer found that the easement running through AAE's property was a non-county-maintained road within a residential subdivision because the Parcel Map created four lots, and residential uses are authorized on those lots. (AMF, ¶ 48.) As such, a permit was required to erect a gate across the road. (AMF, ¶ 48.) For the same reasons, an administrative permit is required before erecting a gate across Bayley Lane. To confirm, during Robert Peters' deposition, he was asked whether a permit is required "if more than one property has use of the easement," to which he responded, "For a gate to cross it, yes." (SSUF, ¶ 29)

In response to Plaintiff's argument that it is exempt from the El Dorado County Code section, Defendants point out that Plaintiff obtained permits for building the wedding venue, and therefore agreed to abide by the Zoning Ordinance. There is a dispute as to whether Plaintiff is exempt from the gate ordinance.

Christopher Perry was designated by El Dorado County Code Enforcement Unit as the person most knowledgeable about code violations, notice of violations, and El Dorado County Ordinance Code regarding gates and easements, specifically regarding Plaintiff's and Defendants' properties. (AMF, ¶ 53.) During his deposition, he confirmed that El Dorado County Code section 130.30.090 requires a gate permit because Bayley Lane provides access to more than one address, and how the road was created—through a reserved easement or adverse

possession—is irrelevant. (AMF, ¶ 53.) The only thing that matters is that there is a physical road. (AMF, ¶ 53)

Deposition of the Division Chief Fire Marshal for El Dorado County confirmed that El Dorado County Fire Protection Standard B-002 applies to gates along private roadways that access multiple properties. (AMF 55-56) El Dorado County Fire Protection Standard B-002 states that "[t]he total number of vehicle access control gates or systems, through which emergency equipment must pass to reach any address, shall not exceed one." (AMF, ¶ 57.) Braden Stirling confirmed that for roadways, the number of gates must not exceed one. (AMF, ¶ 58.)

Defendants respond that this Court has previously ordered a gate permit. On or about August 13, 2021, Plaintiff applied ex parte for a temporary restraining order and an order finding Defendants in contempt of this Court's preliminary injunction requiring them to restore Plaintiff's fencing and gate. (AMF, ¶ 61.) At the hearing, the judge ordered the parties to apply for a gate permit and held that absent a permit, Defendants were not in contempt of court. (AMF, ¶ 62.) Despite not wanting a gate on Bayley Lane, Defendant Alexander Byrd complied and submitted an administrative permit application to El Dorado County Planning and Building Department. (AMF, ¶ 63.) Defendants' counsel, Nabil Samaan, then informed Plaintiff's counsel, Ronald J. Scholar, that the permit application was submitted and permit fees needed to be paid. (AMF, ¶ 64.) Mr. Scholar's response was not to object, but simply to request a copy of the permits submitted. (AMF, ¶ 64.) By implication, the Court required that El Dorado County Code section 130.30.090 be followed. Plaintiff did not take any action to disturb the Court's order, such as by filing a writ of mandate, and did not take any action to object to the permit application, and thereby implicitly ratified the requirement of a gate permit.

Plaintiffs reply that the gate is easily unlocked and opened and that there is no evidence the fence and gate were placed out of spite.

Lastly, Defendants argue that the gate is a nuisance and they have a right to abate it by removing or destroying it.

Opposition

In addition to Defendants' responses outlined above, they raise the following.

1. Lack of Standing

Defendants state that District lacks standing to sue Defendants because District doesn't possess the right sued upon – the right to establish the easement's existence, location and dimensions. Because the 1990 Deed does not allow Plaintiff to use or dispose of the GDRD Property according to its pleasure, but rather imposes restrictions on use, the County of El Dorado did not convey the GDRD Property to Plaintiff in fee simple absolute. Instead, Plaintiff has a qualified interest in the GDRD Property and the County of El Dorado retained a

reversionary interest. (See Civ. Code § 768.) The County of El Dorado clearly did not convey the authority to approve the location of the easement in the 1990 Deed but retained that authority.

Plaintiff replies that this issue was raised on demurrer and failed. Further, they argue that GDRD owns the real property over which Defendants contend they have an easement at a specified location and thus has standing to resolve a cloud on title to its real property. (CCP §§760.020(a), 1060, 1061.

2. Lack of Ripeness

Plaintiff seeks a judicial determination with respect to the property rights and duties over the easement, including as they relate to fencing along the easement and a gate across it. (AMF, ¶ 2) This issue is not yet ripe for this Court's determination because Plaintiff does not have permits to place the gate on the easement. El Dorado County Code 130.30.090.C requires an administrative permit to erect gates across non-county-maintained roads within a residential subdivision consisting of two or more lots. (AMF, ¶ 3.) In three separate letters dated September 30, 2020, October 8, 2020, and April 9, 2021, El Dorado County Code Enforcement informed Plaintiff that it was in violation of local county ordinances for installing a gate on an easement without a permit. (AMF, ¶ 4.) These notices contradict GDRD's argument that they are exempt from County Code.

Plaintiff replies that the gate does not affect determination regarding the easement, and that GDRD is exempt from the gate ordinance.

3. Failure to Join Indispensable Party

The contention that indispensable parties were not joined may be raised at any time. (County of Alameda v. State Bd. of Control (1993) 14 Cal. App. 4th 1096, 1105 n.5.) El Dorado County has an administrative permit process to determine whether gates are permitted on easements. (AMF, ¶ 3.) Without joining El Dorado County as a party, complete relief cannot be afforded to the current parties in the form of a determination on whether a gate is allowed. Even worse, adjudication of this issue in the County's absence could subject the parties to inconsistent obligations if the Court determines that a gate is allowed on Bayley Lane while the County determines the opposite. Defendants argue that Plaintiff's failure to join the County as a party is grounds for having this case dismissed but have not filed such a motion.

Plaintiff replies that this issue was raised on demurrer and overruled. GDRD argues that the court can grant complete relief here because it can decide all of the issues relating to approval, location and dimensions of the easement as well as the fence and gate without the County. If the County later decides the gate or fence violates its ordinance, that can be raised by the County to GDRD.

There is a dispute as to: whether the 1990 Grant Deed was a complete transfer to District in fee simple absolute, whether the 2011 Parcel Map establishes the location and the width of the

easement, whether the 2021 Record of Summary establishes the location, whether the easement has been or can be perfected, and whether or not a gate and parallel fencing can be placed.

TENATATIVE RULING #7a:

1. **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
3. **PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED IN WHOLE.**
4. **DEFENDANTS' OBJECTIONS NUMBER 2 THROUGH 8 ARE NOT ADDRESSED SINCE THE MOTION HAS BEEN 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.

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.

7b: Byrd/Wilson Motion for Summary Judgment or Alternatively, Summary Adjudication against GDRD

The motion and alternative motion are made on the grounds that the action is without merit, the action is barred by the doctrine of unclean hands, the statute of limitations, and ripeness, there is no triable issue of material fact, and Moving Defendants are entitled to judgment as a matter of law.

Defendants Alexander Byrd, Maynard Byrd, Debra Byrd, Laura Byrd Rodarte, Joshua Rodarte, Terry Wilson and Dawn Wilson (collectively referred to as "Defendants"), bring a Motion for Summary Judgment or Alternatively, for Summary Adjudication, against Plaintiff Georgetown Divide Recreation District ("GDRD" or "Plaintiffs" or "District"), filed on April 12, 2024.

Standard of Review for Summary Judgment

Code Civ. Proc. § 437c(c) sets forth the matters the court is required to consider in ruling on the motion:

In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

Mediterranean Const. Co. v. State Farm Fire & Cas. Co., 66 Cal. App. 4th 257, 262, 77 Cal. Rptr. 2d 781 (4th Dist. 1998) (Because granting the motion is such a drastic remedy, all procedural requirements must be satisfied.)

Standard of Review for Summary Adjudication

Code Civ. Proc. § 437c(f)(2) provides, in pertinent part: A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment…. Cal. Rules of Court, rule 3.1350(b), also covers motions for summary adjudication:

> If made in the alternative, a motion for summary adjudication may make reference to and depend upon the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

Defendants' Burden of Proof

Code Civ. Proc. § 437c(p)(2) sets forth defendant's or cross-defendant's burden in moving for summary judgment:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

Santa Clara Valley Water District v. Century Indemnity Company, 89 Cal. App. 5th 1016, 306 Cal. Rptr. 3d 724 (6th Dist. 2023); Genisman v. Carley, 29 Cal. App. 5th 45, 239 Cal. Rptr. 3d 780 (6th Dist. 2018) ("A defendant moving for summary judgment has the burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is a complete defense to that cause of action").

Request for Judicial Notice

Defendants filed a request for the court to take judicial notice of grant deeds and other recorded documents, pleadings on record with this court, and acts of the County.

Plaintiffs filed a request for the court to take judicial notice of documents filed with the Secretary of State, deeds, pleadings, and El Dorado County ordinances.

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 "regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States"; "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States"; "records of (1) any court in this state or (2) any court of record 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)-(e), (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. Both parties also request that the court take judicial notice of deeds. *Ragland v. U.S. Bank Nat'l Assn.*, 209 Cal. App. 4th 182, 194, (2012) ("A recorded deed is an official act of the executive branch, of which this court may take judicial notice. (Evid. Code, §§ 452, subd. (c), 459, subd. (a); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, 33 Cal.Rptr.2d 646; *Cal–American Income Property Fund II v. County of Los Angeles* (1989) 208 Cal.App.3d 109, 112, fn. 2, 256 Cal.Rptr. 21.")

Both parties' requests for judicial notice are granted.

1. Unclean Hands

Defendants raise the affirmative defense of unclean hands, which is well established in case law. A plaintiff must come into court with clean hands, and keep them clean, or he or she will be denied relief, regardless of the merits of his or her claim. (*Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal. App. 5th 512, 533.) The equitable doctrine of unclean hands applies when a plaintiff has acted unconscionably, in bad faith, or inequitably in the matter in which the plaintiff seeks relief. (*Salas v. Sierra Chem. Co.* (2014) 59 Cal. 4th 407, 432.) The misconduct need not be a crime or an actionable tort; any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. (*Aguayo v. Amaro* (2013) 213 Cal. App. 4th 1102, 1110.)

Unclean hands is "an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it." (*Kendall-Jackson Winery*, 76 Cal.App.4th at 985.) The doctrine of unclean hands is generally a defense available in both legal and equitable actions. (*Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal.App.5th 512, 533.) Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries. (*Id.*)

Plaintiff argues that GDRD as the owner of the real property has the right to locate the unperfected reserved easement. (SDF 3-5, 6.) They argue that the maps submitted by Defendants did not comply with the 1977 Grant Deed and did not include proper surveyed measurements and that the gate is exempt from the zoning ordinance.

a. Trespass to Land, Trespass to Chattels, Nuisance, Quiet Title

Defendants argue that the 1977 Deed created the easement and that the County of El Dorado approved its location, and therefore Plaintiff has acted in bad faith by refusing to acknowledge the existence, location, and purposes of the easement. The 1977 Deed reserved an easement through the GDRD property for the benefit of A&B Development Company (A&B), its

successors and assigns. (SSUF 1) Defendants are the successors of A&B and therefore the easement created benefits Defendants. The 1977 Deed states that the reserved easement is good and sufficient for all purposes to provide access, utilities and other services. (SSUF, ¶ 10.) The easement is therefore not limited in scope of use, and Defendants should be able to use it for all purposes. The 1977 Deed did not establish the exact location of the easement.

In 1990, the County of El Dorado deeded the GDRD property to Plaintiff. (SSUF 2) There is a dispute between the parties as to whether this was a complete transfer or whether the County retained a reversionary interest pursuant to Civil Code §768.

Plaintiff claims it possesses the right to approve the easement location and Defendants argue the right is held by the County. Robert Peters, PMQ for the County, testified at deposition that generally a parcel map or regular survey would satisfy the recording requirements for establishing location of an easement. (SSUF 16) The parcel map identifies the easement where Bayley Lane is currently located. (SSUF 4) The Record of Survey provides that the easement is 50-feet-wide and located where Bayley Lane is located. (SSUF 5)

El Dorado County Code section 120.24.085 sets out notice requirements and procedure for the approval of tentative maps. (RJN, Ex. J) The tentative map must also go through a public hearing for which notice was given, and public notice is mailed to nearby property owners. (SSUF, ¶ 19.) Robert Peters was asked whether, in general, parcel maps necessarily have to be approved by the County of El Dorado in order for them to be recorded, and he responded, "Yes, they would have to be approved by the County." (SSUF, ¶ 20.) To further confirm approval, County Surveyor Philip Mosbacher emailed Moving Defendant Alexander Byrd on March 17, 2021. (Declaration of Alexander Byrd ["Alex Decl."], ¶ 2, Ex. Y.) In this email, Philip Mosbacher wrote that a fifty-foot-wide road and public utility easement was created across the GDRD Property when the Parcel Map was recorded. (SSUF, ¶ 21.) Therefore, the Parcel Map was approved by the Board of Supervisors and the Planning Department. This satisfies the condition in the 1977 Deed for establishing the location of the easement and perfects the easement.

On September 8, 2021, Jacqui Brunton, the general manager of Georgetown Divide Recreation District, was deposed. (Call Decl., ¶ 3, Ex. V.) During her deposition, she was asked whether Plaintiff at any time complained about or objected to the tentative parcel map, and she responded "Not to my knowledge." (SSUF, ¶ 23.) Plaintiff wants to challenge the location of the easement now that the Parcel Map has been approved, but it is too late as Plaintiff did not object when it had a chance and has now waived the right to object.

In a letter to Defendants, Ms. Brunton wrote: "Should you and the other property owners have plans to improve the easement to benefit your property, we would be happy to set up a meeting to discuss options." (SSUF, ¶ 27.) Therefore, GDRD, through its agent Jacqui Brunton, acknowledged the existence of the easement and that it benefits Defendants' properties. Plaintiff's present refusal to acknowledge the existence of the easement and

insistence that it has not approved the easement's location is a showing of its unclean hands. Plaintiff responds that nothing in Ms. Brunton's letter can bind GDRD as an entity – only the Board of Directors can do so at a public meeting or through an authorization.

A finding to the contrary, that the Parcel Map is no good and does not establish and perfect the easement, would have the effect of creating landlocked parcels. In addition, this means that the title companies could face claims, and the banks' notes and deeds of trust are invalid. This might also effectuate a taking of Defendants' property rights without compensation. However, if the Court finds that the Parcel Map is valid, then the consequence is simply that Plaintiff will have a road running through its property, which they have known about since they acquired title.

The Defendants argue the following: Plaintiff's inequitable behavior relates directly to its causes of action for trespass to land, trespass to chattels, nuisance, and quiet title. Plaintiff seeks to quiet its title free of any right, title, or interest by Defendants in the easement over the GDRD Property, but the County of El Dorado has already approved the easement's location. Therefore, Plaintiff's request to quiet title free of any right, title, or interest by Defendants should be denied, and summary judgment, or in the alternative, summary adjudication, should be granted in Defendants' favor.

Plaintiff argues that GDRD, as the owner of the property, has the right to approve the precise location of the easement. Mr. Peters' testimony is irrelevant because it is limited only to his experience, and because the question of which entity presently has the right to determine the location of the Reserved Easement is a question of law and intent based upon the language of the deed. (*S. Cal. Edison Co.("SCE") v. Severns* (2019) 39 Cal.App.5th 815, 823; Civ. Code §1636. In 1990, the County transferred all of its interest in the property to GDRD. The transfer was unrestricted except for a future condition that if GDRD ceases to exist or ceases operating the property as a park district, the property reverts to the County. (SDF 6.) Thus, the 1990 Grant Deed is a transfer in fee simple subject to a condition subsequent giving the County the right to terminate GDRD's fee estate if the stated conditions occur. (*Severns v. Union Pac. RR*, (2002) 101 Cal.App.4th 1209, 1216; *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 126. Therefore, Plaintiff argues that GDRD stands in the County's shoes and possesses all of its rights and privileges, which includes the right to determine the precise location of the reserved easement.

Plaintiff argues that the 1990 Grant Deed also supports the determination that the right to locate the unperfected reserved easement is vested with GDRD. The 1990 Grant Deed, as a matter of law, transferred the fee simple estate to GDRD. And while the parties intentionally created the condition subsequent regarding use of the property and GDRD's continued existence, they were silent as to any other limits on transfer. If the parties wanted the County to retain the right to determine the location of the reserved easement, they would have placed those conditions in the 1990 Grant Deed. That they did not do so is an expression of their intent

that the right to approve pass with the property to GDRD. Thus, absent a limitation on the transfer of the authority to approve the maps, GDRD inherited that authority too.

Defendants reply that the 1990 Deed states that the GDRD Property shall be used solely for the provision of park and recreation services to the public. The 1990 Deed grant to Plaintiff the authority to approve the easement's location, dimensions, or uses. The 1990 Deed did not transfer the GDRD Property to Plaintiff in fee simple absolute; it only transferred the right to use the land as a park. Property ownership is either absolute or qualified. (Civ. Code § 678.) "The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws." (Civ. Code § 679.) Plaintiff has a qualified interest in the property to run a park. Plaintiff holds the position that the 1990 Deed was a complete transfer to Plaintiff of the GDRD Property and all rights, obligations and burdens thereto. (See, Civ. Code § 1084 ("The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.") But the 1990 Deed states that the property shall be used solely for the provision of park and recreation services to the public.

Defendant further replies that GDRD was on notice as to the existence of the easement on its property when it acquired the property, because the 1977 Deed had been recorded. GDRD had at least constructive notice as to the road's existence and did not take the property free of such easement.

2. <u>Declaratory Relief</u>

Plaintiff seeks a judicial determination with respect to the property rights and duties over the easement, including as they relate to fencing along the easement and a gate across it. (RJN, Ex. H, p. 9, ¶ 42-44.) However, Plaintiff has also acted inequitably when it comes to the gating across the easement. On August 24, 2020, Plaintiff installed a fence along Bayley Lane and a gate crossing it. (SSUF, ¶ 7.) Plaintiff installed the gate without a permit, which is required by El Dorado County ordinances. (SSUF, ¶ 8.) Defendants removed the gates and fencing on April 28, 2021. (SSUF, ¶ 9.) Plaintiff filed for a temporary restraining order and a preliminary injunction, requesting that Defendants be ordered to restore the fence and gating. (RJN, Ex. F) On July 29, 2021, the Court issued an Order Granting Plaintiff's Motion for Preliminary Injunction and required Defendants to restore Plaintiff's fencing and gate to the condition that existed prior to April 28, 2021. (RJN, Ex. G.) Plaintiff was made aware of the local ordinances requiring a permit for the gate before initiating litigation and yet insisted on Defendants restoring the illegal gate. Because of this inequitable behavior, Plaintiff has unclean hands as it relates to this litigation.

Defendants cite to *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 57 where the Court of Appeal upheld the trial court's ruling that plaintiffs had unclean hands for failure to comply with the statute and other actions. That case involved the transfer of car dealerships. Defendants compare that case to the District's installation of a gate across the

easement without first obtaining a permit. Plaintiff argues that Defendants fail to show analogous case law on the specific unclean hands issue. *Kendall-Jackson Winery, Ltd. V. Superior* Court (1999) 76 Cal.App.4th, 970, 979-984. *Fladeboe* violated the Vehicle Code. GDRD is exempt from the ordinance and the County, the enforcement authority, has not decided the issue waiting for the Court. (SDF 82.) Moreover, *Fladeboe* failed to notify Isuzu of the transfer. In contrast, the gate was open and obvious, GDRD provided Defendants with the combination to the gate so they could traverse the GDRD property (SDF 40-44) and GDRD held public meetings on Defendants' maps (SDF 70-81.) Finally, even if *Fladeboe* applied, it would only apply to the gate and not the quiet title determinations related to the easement or the trespassing and nuisance claims.

Defendants reply that much like in *Fladeboe*, Plaintiff has violated the local zoning ordinance that governs the rights and obligations between the parties as they relate to fencing and gating the easement, and that violation is the direct cause of Plaintiff not being able to gate the easement –the harm for which Plaintiff has sued Defendants. Regarding the lack of analogous case law, Defendants reply that "Although the application of the unclean hands defense is usually a question of fact, under appropriate circumstances it may be determined as a matter of law. . . . Here because there is no analogous case applying the doctrine of unclean hands as a defense to an action pursuant to section 7107, the doctrine can be determined as a matter of law." (East West Bank v. Rio School Dist. (2015) 235 Cal.App.4th 742, 752.) It is not dispositive that there is no analogous case law on all causes of action of the complaint, as the defense can be decided as a matter of law.

In short, an administrative permit is required to erect a gate across the easement because it provides access to multiple residential properties, and the County of El Dorado and the El Dorado County Fire Protection District impose requirements that must be satisfied before a permit can be issued. (SSUF 30-34; RJN, Ex. L; Call Decl., ¶5, Ex. X; Call Dec. ¶4, Ex. W) In a letter dated September 30, 2020, El Dorado County Code Enforcement informed Plaintiff that it was in violation of local county ordinances for installing a gate on an easement without a permit. (RJN, Ex. O.) El Dorado County Code Enforcement issued another letter to Plaintiff dated October 8, 2020, with the same information. (RJN, Ex. P.) In yet another letter dated April 9, 2021, El Dorado County Code Enforcement followed up with Plaintiff about its ordinance violation because Plaintiff had not yet secured a permit for putting a gate on the easement. (RJN, Ex. Q.) Through these letters, Plaintiff was made aware that its gate was in violation of local codes and/or ordinances.

Plaintiff continued to bring actions before the court for Defendants to restore the gate, even though Plaintiff had notice the gate was illegal.

3. Location of Easement Established and Statute of Limitations

a. 1977 Deed Created Floating Easement and its Location Established

"Some expressly granted easements—commonly known as "floating easements"—are not specifically defined as to location by the creating conveyance. Such easements are nonetheless fully valid and enforceable by their holders." (*Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 823 [citation omitted].) "An easement granted in general terms, nonspecific as to its particular nature, extent or location, is, as mentioned above, perfectly valid. It entitles the holder to choose a 'reasonable' location . . . The use actually made by the holder over a period of time fixes the location . . ." (*Colvin v. S. Cal. Edison Co.* (1987) 194 Cal.App.3d 1306, 1312, abrogated on other grounds in *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1106–1108.)

"The use of the easement in a particular course without objection by the owner of the servient tenement establishes [or fixes] the easement along the route used. Once that occurs, the easement's location is no longer floating and cannot be altered without the parties' consent." (*Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 825 [citation omitted].) "Where the right of way has been used at a particular location with the acquiescence of the servient owner, the parties have, in effect, placed their own practical construction upon the grant, and the easement will be regarded as fixed at that place. . . . And the grantor has no right either to hinder the grantee in his use of the way or to compel him to accept another location, even though a new location may be just as convenient." (*Youngstown Steel Products Co. v. Los Angeles* (1952) 38 Cal.2d 407, 410.)

Plaintiff responds that the 1977 Grant Deed did not create a floating easement. It has two clear and substantial conditions precedent to the perfecting of the Reserved Easement that were not present in Severns: (1) the reserved easement can only be north of the Bayley Barn; and (2) can only be fixed by approval of the appropriate governmental authority. (SDF 3-5.) To allow Defendants to self-select a location south of the Bayley Barn, which is where the Dirt Road is now, runs directly afoul of the specific requirements of the 1977 Grant Deed. Unlike in *Severns* where the easement was "nonspecific as to its particular nature, extent or location" the 1977 Grant Deed specifies a location range and approval method. Plaintiff argues that the difference between this case and *Severns*, is that in *Severns* all three conveyances gave "free access" to the specifically defined easement. *Severns* at 819-820, 823. Further, in *Severns* there was no fixed access route at the time of the conveyance so a reasonable selection was permitted. By contrast, while the exact location of the Reserved Easement was not pinpointed, the 1977 Grant Deed contains express range of location and approval conditions. (SDF 3-5)

Defendants reply that the words of the 1977 Deed make it clear that the road already existed at the time the deed was executed, and this was not to be a general floating easement to be located later on. The deed reserves an easement that is located, not to be located, in the general area described—the deed makes uses of the present tense of the word. Imagining for a

minute that today is the day that the 1977 Deed was executed, the road is already in existence and is located generally in the area north of the Bayley House Barn and south of the toe of the knoll containing the Bayley grave sites. If the road was not already in existence, the deed would have provided that its location is to be located—in the future— in the general area described. The plain meaning of these words demonstrate that the road was already in existence at the time of the deed, and it was already generally north of the barn that existed at the time—the barn was already south of the road. The road already existed, and its exact location on a formal map was to be determined later on. The function of the map was to depict the road's location, not to perfect a new location. The plain language of the deed demands this interpretation. If, and only if, the Court examines the plain language of the deed and determines that the language is ambiguous, then the Court can consider extrinsic evidence.

Defendants further reply that Bayley Lane is a reasonable location for the easement because there is already a road there, avoiding the possibility of having two different roads crossing Plaintiff's property. Additionally, as discussed in Defendants' opposition to Plaintiff's Motion for Summary Adjudication, there is a playground to the north of Bayley Barn, and Plaintiff probably does not want to demolish it. The area further north is a wetland, and the terrain is on a hill full of trees, making it unfeasible to build a road there. Any road necessarily has to go south of the current structure known as Bayley Barn, and there is no better location than where a road already exists.

Defendants argue that the location of the easement has been fixed to Bayley Lane. The Byrds have been using Bayley Lane ever since they purchased their property in March of 2018. (Maynard Decl. ¶2, SSUF 39). The Byrd deed includes two road and public utilities easements and there are three exhibits attached to the deed. (SSUF 40) The third exhibit is a map defining those easements and is dated June 17, 2016. (SSUF 41) Defendants argue that this exhibit to the deed dates the easement's location to at least 2016.

Further, a Parcel Map was recorded in the Official Records of El Dorado County on October 31, 2011, in Book 50 of Parcel Maps at Page 128. (RJN, Exhibit C.) The Parcel Map delineates the location of the easement where Bayley Lane is located today. (SSUF 4.) A Record of Survey was also recorded with the El Dorado County Recorder on May 20, 2021. (RJN, Exhibit D.)

In regard to the 2011 Parcel Map, Plaintiffs argue that Defendants rely exclusively on empty County forms, inapplicable County policies about Tentative Parcel Maps, and the misconstrued general statements of County Deputy Director of Planning for the Planning and Building Department Robert Peters. (Def. SUF 18-20, 22.) When Mr. Peters was asked specific questions relating to the 2011 Parcel Map, the Record of Survey and how the County handled those two documents, it was clear that none of these documents triggered any notice to GDRD and that they did not result in any approval of the Reserved Easement. Here, the 2011 Parcel Map was the mechanism for a boundary line adjustment. (SDF 54- 55.) It did not perform the

function of a Parcel Map as it did not divide any existing properties. The 2011 Parcel Map did not adjust, affect or align the GDRD's boundaries. (SDF 56.) Further, the GDRD was not provided notice of the 2011 Parcel Map. (SDF 57.) The 2011 Parcel Map for the boundary line adjustment was approved by Planning and Building Director. (SDF 58.) The 2011 Parcel Map only surveyed the GDRD Property at its north and west boundaries. (SDF 59.)

Plaintiff states that the 2011 Parcel Map did not survey the location of the reserved easement. (SDF 60.) In fact, it is not even a survey of the GDRD Property. (SDF 59-60.) The District's property is cut out of the 2011 Parcel Map. Further, it contains none of the relevant reference points on it such as the location of the Bayley Barn and the toe of the knoll to its north between which the Reserved Easement, if any, must be located. The 2011 Parcel Map also fails to support Defendants' contention that the claimed easement through the GDRD's property is 50-feet wide. The description distinctly omits any width of the easement that traverses GDRD property which is the only easement addressed in the 1977 Grant Deed.

Defendants argue that the Record of Survey provides that the easement is fifty feet wide and exists exactly where Bayley Lane is currently located. (SSUF 5.) The Record of Survey also provides that the purpose of the survey is to establish a location for the fifty-feet-wide easement as dedicated in the Parcel Map. (SSUF 6.) Most importantly, the Notes section of the Record of Survey states that "BOOK 1467 AT PAGE 463 GIVES NO PRECISE DESCRIPTION AS TO THE LOCATION OR WIDTH OF THE ACCESS EASEMENT BEING RESERVED BY THE DOCUMENT THE CENTERLINE SHOWN HEREON IS FIELD LOCATED AND THE ACCESS CURRENTLY USED AND THE ONLY ACCESS ACROSS SAID PARCEL WITH AN ENCROACHMENT TO HIGHWAY 49 AERIAL PHOTOS OF THE LAST 30 YEARS SHOW NO OTHER LOCATION." (SSUF 42.) Defendants argue that the Parcel Map and Record of Survey establish that as of 2011, the easement's location had already been fixed on Bayley Lane for 30 years.

Plaintiffs respond that the Record of Survey is also not an approval of the location of the Reserved Easement. Records of Survey, while recorded, are not approved by the County. (SDF 61.) The Record of Survey prepared by the Byrds did not go through the process or procedures that apply to the approval of parcel maps. (SDF 62.) It does not operate as approval by the County Board of Supervisors and the County Planning Commission for the location of the Reserved Easement. The Byrd's 2021 Record of Survey also does not provide the precise location of the Reserved Easement. Plaintiffs argue that the notes section shows that the surveyor admits that they do not know where the Reserved Easement is and is only placing it at the Dirt Road because the Dirt Road is there. As the 1977 Grant Deed makes clear, because it is south of the Bayley Barn, the Dirt Road has never been the correct site of the Reserved Easement.

Defendants argue that GDRD has acquiesced to this location. El Dorado County Planning Services has a Tentative Parcel Map Application for the approval of parcel maps. (RJN, Ex. I.) El Dorado County Code section 120.24.085 sets out notice requirements and procedure for the approval of tentative maps. (RJN, Ex. J) The tentative map must go through a public hearing for

which notice was given, and public notice is mailed to nearby property owners. (SSUF 19.) The public hearing is advertised in a local newspaper and all neighbors within at least a 500-foot radius are given notice by mail. (SSUF 22.) Before the Parcel Map in this case was recorded, Plaintiff would have been given notice of the public hearing and given a chance to object to the tentative map. However, Plaintiff did not object. On September 8, 2021, Jacqui Brunton, the general manager of Georgetown Divide Recreation District, was deposed. (Call Decl., ¶ 3, Ex. V.) During her deposition, she was asked whether Plaintiff at any time complained about or objected to the tentative parcel map, and she responded "Not to my knowledge." (SSUF, ¶ 23.) GDRD's failure to object to the tentative parcel map amounted to its acquiescence to the easement's location.

GDRD argues that the reserved easement is between north of the Bayley Barn and south of the toe of knoll of the Bayley family gravesites. (SDF 4, 5) None of the "maps" provided to the GDRD Board by Defendants place the reserved easement north of the Bayley Barn as required under the 1977 Grant Deed. (SDF 70-81 [see OppBEX pp. 295-302; 316-322].) Plaintiffs further argue: "Discretion is conferred on public functionaries to act according to the dictates of their judgment." *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-502. In that case, the court focused on the fact that a provision of the city zoning ordinance which conferred upon the director the right to deny a permit application to place a sign, was not an unconstitutional delegation of authority. Plaintiffs also cite *Alameda Health Sys. v. Alameda Cty. Emps. Retirement Ass'n* (2024) 100 Cal.App.5th 1159, 1177, for the proposition that courts will not substitute their judgment for that of an entity's, when the issue is committed to the public entity's discretion. However, the court was reviewing the entity's decision for abuse of discretion. *Id.* The court further added that "such a review is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support." *Id.* at 1177, See also *Weinstein v. County of Los Angeles* (2015) 237 Cal.App.4th 944, 964.

Defendants reply that the 1977 Deed references a Bayley House Barn, but Plaintiff has consistently held on to the argument that the easement cannot lie on Bayley Lane because it is to the south of Bayley Barn. The declarations of Larry Courtney, Robert Keene, and Jacqui Brunton, under penalty of perjury, all refer to the current structure as the Bayley Barn, not the Bayley House Barn. Defendants have detailed the issue extensively in their opposition to Plaintiff's Motion for Summary Adjudication—there have been several structures on the property over the years referred to as a barn, and the barn's location in 1977 is unclear. Plaintiff's insistence that the easement go north of the current structure known as Bayley Barn, which barn happens to be north of Bayley Lane, is disingenuous.

Plaintiffs argue that The Reserved Easement in the 1977 Grant Deed is conditional upon satisfaction of specific terms and conditions. It requires that "the exact location of such easement shall be precisely determined upon arrival by the El Dorado County Planning Commission and the El Dorado County Board of Supervisor." The location of the Reserved

Easement has neither been approved by the El Dorado County Planning Commission nor the El Dorado County Board of Supervisors (SDF 5, 7) nor the GDRD. (SDF 8.)

Defendant argues that in order to get the "Dirt Road" to be Bayley Lane, part of the application process involves submitting an exhibit map that accurately plots the road and includes parcel boundaries. The petition must be signed and approved by the local fire department and post office. (SSUF 24) Plaintiffs respond that as long as the Petition is completed according to the ordinance, then it must be approved, and it is not a determination regarding property rights. (SDF 63-68)

b. <u>Three-Year Statute of Limitations</u>

Defendants argue that there is a three-year statute of limitations for actions for trespass upon or injury to real property and nuisance. (CCP §338(b); See *Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 827-828 (holding that road built was a permanent nuisance as opposed to continuing nuisance, and the statute of limitations began to run when the road was built)).

They further argue that while there is no specific statute of limitation for quiet title, the underlying theory of relief determines the applicable statute of limitations. In its first cause of action, Plaintiff seeks to quiet its title free of any right, title, or interest by Defendants in the easement over the GDRD Property, contending that such an easement does not exist, or at least not where the Dirt Road is currently located. (RJN, Ex. H, p. 9, ¶ 38-40.) Plaintiff has held the position that it has the right to approve the location of the easement, and that since it has not made any such approval, the easement is unperfected and does not exist. (RJN, Ex. H, p. 5-6, ¶ 18.) Since the gravamen of Plaintiff's declaratory relief cause of action is the easement across the GDRD Property, this is an action for injury to real property and the quiet title cause of action is governed by the three-year statute of limitation.

Plaintiff argues that the statute of limitations is five years under CCP §318 or §321, because the reserved easement is unperfected and Defendants are encroachers. Plaintiff states that statutes of limitations for quiet title actions are determined by evaluating the gravamen of the action, citing *Kumar v. Ramsey* (2021) 71Cal.App.5th 1110, 1122-1123 (holding that the statute of limitations begins to run on a quiet title claim when the plaintiff no longer has undisturbed possession) They also cite *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1095-1096, where that court found that the property owners had five years to bring their claim unless the defendant adversely occupied the property. However, in that case, the court summarized the case law and stated: "…[T]hat an exclusive prescriptive easement, 'which as a practical matter completely prohibits the true owner from using his land' will not be granted in a case (like this) involving a garden-variety residential boundary encroachment." (citations omitted) *Id.* at 1093.

The *Salazar* court provided a test for determining when possession has sufficiently been disturbed and it consists of: "(1) when were plaintiffs no longer owners 'in an exclusive and undisputed possession' of the land; (2) when was defendants' adverse 'claim…pressed against' plaintiffs; or (3) when was defendants' hostile claim 'asserted in some manner to jeopardize the superior title' held by plaintiffs." *Salazar v. Thomas* (2015) 236 Cal.App. 4th 467, 476-478. Defendants incorrectly summarize it as a three-prong test, using "and" when the case actually states "or." *Id.* at 478. Plaintiff argues that Defendants do not offer "any supporting evidence" showing that the location of the easement has been fixed by at least 2011.

i. <u>Nuisance</u>

As noted above, Defendants argue that the statute of limitations begins to run when there is a permanent nuisance. When a floating easement has been fixed, it may be altered only with the parties' consent. (*Southern California Edison Co. v. Severns* (2019) 39 Cal.App.5th 815, 825.) In such a case, the alleged nuisance is permanent. (*Id.* at 828-829.) Therefore, Defendants argue that the statute of limitations started to run when the floating easement was fixed.

Defendants argue that the easement's location has been fixed at the location of Bayley Lane since at least 2011, meaning that at most, Plaintiff had until 2014 to bring its action for nuisance. On May 3, 2021, Plaintiff filed a complaint against Defendants for Quiet Title and Declaratory Relief. (RJN, Ex. E.) Plaintiff filed an amended complaint against g Defendants on October 12, 2021, for Quiet Title, Declaratory Relief, Trespass to Land, Trespass to Chattel, and Nuisance (RJN, Ex. H.) Even using the relation back doctrine, the statute of limitations had run by the time Plaintiff brought the nuisance cause of action, and Plaintiff's action was and is barred.

ii. <u>Quiet Title</u>

"[Q]uiet title actions have special rules for when the limitations period begins to run." (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 477.) "[N]o statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property." (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) However, plaintiffs seeking to quiet title do not have an infinite time to sue as long as they are in possession of the property. The statute of limitations begins to run when the party is no longer in undisturbed possession. (*Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231, 1238.) When an adverse claim is "pressed" against a party in possession, the party will no longer be deemed to be in undisturbed possession. (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 478.) As of at least 2011, the owners of the dominant estates pressed their adverse claims against Plaintiffs for their right to use the easement across the GDRD property and Plaintiff no longer had undisturbed possession of the servient estate. Plaintiff did not file its action until 2021.

4. Lack of Ripeness

Defendants argue that Plaintiff's claims are not ripe for judicial determination with respect to property rights and duties over the easement, including the fencing and gate, because Plaintiff does not have permits to even place those gates. El Dorado County Code 130.30.090.C requires an administrative permit to erect gates across non-county-maintained roads within a residential subdivision consisting of two or more lots. (RJN, Ex. L.) In a letter dated September 30, 2020, El Dorado County Code Enforcement informed Plaintiff that it was in violation of local county ordinances for installing a gate on an easement without a permit. (RJN, Ex. O.) El Dorado County Code Enforcement issued another letter to Plaintiff dated October 8, 2020, with the same information. (RJN, Ex. P.) In yet another letter dated April 9, 2021, El Dorado County Code Enforcement followed up with Plaintiff about its ordinance violation because it had not yet secured a permit for putting a gate on the easement. (RJN, Ex. Q.) The issue of Plaintiff's right to place a gate on the easement does not admit of specific relief through a decree of a conclusive character because this Court does not have a conclusive say on whether a gate will be permitted on the GDRD Property, so this issue already fails the first prong of the ripeness analysis.

Plaintiffs argue that issues related to the gate don't affect the determination of whether or not the reserved easement has been perfected, and that GDRD is exempt from the gate ordinance, so they don't need a permit or application for one. Plaintiffs and Defendants are directly at odds over rights in the easement, which creates an actual controversy.

Plaintiffs argue that they are a local agency and therefore exempt from the county gate ordinance. County Zoning Ordinance §130.10.040 Applicability of Zoning Ordinance states that "[a]ctivities of a local agency, as defined in California Government Code Section 53090, as provided in §53091 et seq." are exempt from the County Zoning Ordinance. (SDF 69.) Government Code §53090 defines "local agency" as "an agency of the state for the local performance of governmental or proprietary function within limited boundaries." The GDRD is a local agency park and recreation special district certified by the State located in El Dorado County. (SDF 1-2) Plaintiffs state that County Code Enforcement matter is on hold pending the resolution of the litigation. The notices from the Code Enforcement Officer reference a gate installed on an easement. If there is no easement at the location of the Dirt Road, then Defendants have no right to use it and the placement of a gate is immaterial because they cannot traverse GDRD's property at that location.

Defendants reply that Plaintiff has already been informed by El Dorado County Code Enforcement at least three times that it is in violation of local county ordinances for installing a gate on an easement without a permit. Christopher Perry with El Dorado County Code Enforcement confirmed that there is an open case on Plaintiff for a gate without a permit pursuant to El Dorado County Code section 130.30.090. (Declaration of Nabil Samaan, Esq. ["Samaan Decl."], ¶ 2.) Plaintiff's truly egregious behavior came afterwards, when it requested a temporary restraining order and preliminary injunction ordering Defendants to restore Plaintiff's

fencing and gate, knowing full well that the gate lacked a permit and Defendants would have to violate the Zoning Ordinance in order to comply with the Court's order.

TENTATIVE RULING #7b:

1. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
3. **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY, SUMMARY ADJUDICATION IS DENIED.**
4. **PLAINTIFF'S OBJECTIONS TO EVIDENCE ARE NOT ADDRESSED SINCE THE MOTION HAS BEEN 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.

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.

7c: Byrd/Wilson Motion for Summary Judgment or Alternatively, Summary Adjudication against All About Equine

The motion and alternative motion are made on the grounds that the action is without merit, the action is barred by the doctrines of unclean hands, res judicata and ripeness, there is no triable issue of material fact, and Defendants are entitled to judgment as a matter of law.

Defendants Alexander Byrd, Maynard Byrd, Debra Byrd, Laura Byrd Rodarte, Joshua Rodarte, Terry Wilson and Dawn Wilson (collectively referred to as "Defendants"), bring a Motion for Summary Judgment or Alternatively, for Summary Adjudication, against plaintiff All About Equine Animal Rescue, Inc. ("AAE" or "Plaintiff"), filed on May 2, 2024.

Standard of Review

Code Civ. Proc. § 437c(c) sets forth the matters the court is required to consider in ruling on the motion:

In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

Mediterranean Const. Co. v. State Farm Fire & Cas. Co., 66 Cal. App. 4th 257, 262, 77 Cal. Rptr. 2d 781 (4th Dist. 1998) (Because granting the motion is such a drastic remedy, all procedural requirements must be satisfied.)

Code Civ. Proc. § 437c(f)(2) provides, in pertinent part: A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment…. Cal. Rules of Court, rule 3.1350(b), also covers motions for summary adjudication:

> If made in the alternative, a motion for summary adjudication may make reference to and depend upon the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

Defendants' Burden of Proof

Code Civ. Proc. § 437c(p)(2) sets forth defendant's or cross-defendant's burden in moving for summary judgment:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

Regents of University of California v. Superior Court, 4 Cal.5th 607, 413 P.3d 656, 230 Cal.Rptr.3d 415 (2018) ("A defendant seeking summary judgment must show that the plaintiff cannot establish at least one element of the cause of action").

Request for Judicial Notice

Defendants filed a request for the court to take judicial notice of several deeds and recorded documents, county ordinances and code sections, correspondence by County Code Enforcement and other County entities, and pleadings on file with this Court.

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 "regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States"; "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States"; "records of (1) any court in this state or (2) any court of record 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)-(e), (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. Defendants also request that the court take judicial notice of numerous grant deeds. Ragland v. U.S. Bank Nat'l Assn., 209 Cal. App. 4th 182, 194, (2012) ("A recorded deed is an official act of the executive branch, of which this court may take judicial notice. (Evid. Code, §§ 452, subd. (c), 459, subd. (a); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, 33 Cal.Rptr.2d 646; *Cal–American Income Property Fund II v. County of Los Angeles* (1989) 208 Cal.App.3d 109, 112, fn. 2, 256 Cal.Rptr. 21.")

Defendants' request for judicial notice is granted.

OPPOSITION

Plaintiff responds that it has filed a complaint on June 29, 2020, a cross-complaint on November 4, 2021, and a first supplemental complaint filed February 8, 2024, and that all three pleadings are based upon different facts. Plaintiff argues that Defendants' Motion does not address the latter two pleadings and therefore an order for summary judgment is improper because Defendants haven't met their burden.

Plaintiff further argues that material facts are disputed. The inclusion of a "fact" in the moving parties' separate statement is a concession that said fact is "material," and if that fact is put in dispute, the motion should be denied. *(Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 521.) Here, defendants' material fact numbers 17, 18, and 25 are disputed and those disputes are supported by substantial evidence. (Opposition SSUF.) Moreover, defendants' material fact numbers 4-8, 11, 14-15, 17, and 21 are not supported by any admissible evidence and therefore should also be deemed to be disputed. (*Id.*) For this reason alone, it is within the court's discretion to deny the defendants' motion. (*Insalaco* at 521)

ARGUMENT

1. **UNCLEAN HANDS**

Defendants raise the affirmative defense of unclean hands, which is well established in case law. A plaintiff must come into court with clean hands, and keep them clean, or he or she will be denied relief, regardless of the merits of his or her claim. (*Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal. App. 5th 512, 533.) The equitable doctrine of unclean hands applies when a plaintiff has acted unconscionably, in bad faith, or inequitably in the matter in which the plaintiff seeks relief. (*Salas v. Sierra Chem. Co.* (2014) 59 Cal. 4th 407, 432.) The misconduct need not be a crime or an actionable tort; any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. (*Aguayo v. Amaro* (2013) 213 Cal. App. 4th 1102, 1110.)

Unclean hands is "an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it." (*Kendall-Jackson Winery*, 76 Cal.App.4th at 985.) The doctrine of unclean hands is generally a defense available in both legal and equitable actions. (*Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal.App.5th 512, 533.) Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries. (*Id.*)

Plaintiff responds that a finding of unclean hands requires a three-part test that analyzes: "(1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries." (*Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal.App.5th 512, 533)

a. <u>Trespass to Real Property, Trespass to Chattels, Nuisance, and Quiet Title</u>

Plaintiff seeks to quiet its title so as to make it clear that AAE can fence and gate the perimeter of the AAE Property allegedly in order to contain and raise livestock and to secure its real estate. (SSUF, ¶ 12; RJN, Ex. I, p. 9, ¶ 61.) However, Plaintiff has blocked Defendant's access through the roads traversing the AAE Property. (Alex Decl., ¶ 2.) Additionally, Plaintiff has acted inequitably in direct relation to its cause of action for quiet title, as it has sought to have fencing and gates on the roads without regard for the law—namely El Dorado County Code section 130.30.090—or Defendants' right of access and has sought to make Defendants construct fencing and gates for it.

El Dorado County Code 130.30.090.C requires an administrative permit to erect gates across non-county-maintained roads within a residential subdivision consisting of two or more lots. (RJN, Ex. G.) A hearing officer for the County issued an Administrative Order concerning the gates and found that the easement running through AAE was a non-county-maintained road within a residential subdivision because the Parcel Map created four lots. (SSUF 14) The Administrative Order found that the agricultural exception did not apply and that AAE needed to obtain an administrative permit in order to install gates on Bayley Lane. (SSUF 14) After AAE acquired a permit for the gates across Bayley Lane, AAE didn't comply with the conditions of approval and the administrative permit was revoked. (SSUF 16-17)

El Dorado County Fire Protection District issued a Notice of Intent: Administrative Citation to AAE dated October 26, 2022. (RJN, Ex. R.) The notice expressly states that the administrative permit for Bayley Lane from El Dorado County was revoked. (SSUF, ¶ 25.) Most importantly, the Notice of Intent states in bold and uppercase letters, "EL DORADO COUNTY FIRE WILL NOT APPROVE OF MULTIPLE GATES ACROSS A FIRE ACCESS ROAD PER STANDARD B-003. REMOVE THE SECOND GATE (BAYLEY LANE) ON OR BEFORE NOVEMBER 10TH, 2022 TO AVOID FINES AND ADDITIONAL ACTION PER ECF ORDINANCE 2019- 02. THE SINGLE GATE SHALL ADHERE TO OUR GATE STANDARD." (SSUF, ¶ 25)

As to El Caballo Loco Lane, Defendants removed fencing and gates AAE had that went across the easement. (SSUF, ¶ 21.) El Dorado County Code section 130.30.070 makes it clear that fences shall not be allowed within a road easement, except for gates to a non-county maintained road system subject to the requirements under section 130.30.090. (RJN, Ex. Y.) Since Plaintiff's gates were not in compliance with section 130.30.090, they were not allowed on the road easement, and Defendants were within their rights to remove the obstruction.

Nonetheless, on June 8, 2023, this Court ordered Defendants to apply for a gate permit. (SSUF, ¶ 23.) Defendants have been trying to secure AAE's cooperation to get an administrative permit from El Dorado County to restore the gates, but AAE has been uncooperative. In a letter dated November 28, 2023, El Dorado County Fire Protection District stated that only one gate would be allowed and requested a copy of the yearly maintenance contract for the gate/access control device. (RJN, Ex. S.) When asked about the maintenance agreement, AAE's counsel, Thomas M. Swett responded "that it is up to Defendants, and Defendants alone "to design, construct, and maintain whatever road and gate system they [Defendants] want so long as it is consistent with the court's order to restore the perimeter fencing on AAE's property so that it will safely contain livestock." (Declaration of Nabil Samaan, Esq. ["Samaan Decl."], ¶ 2, Ex. BB.

El Dorado County Fire Protection Standard B-002 states that "[t]he total number of vehicle access control gates or systems, through which emergency equipment must pass to reach any address, shall not exceed one." (RJN, Ex. T.) El Dorado County Fire Protection District issued a letter dated November 28, 2023. (RJN, Ex. S.) In this letter, Fire Marshal Braden Stirling states that multiple gates are not allowed as proposed on the project and only one gate will be allowed. (SSUF, ¶ 26.) The preliminary injunction orders Defendants to restore all damaged gates on the AAE Property, but there were two gates on El Caballo Loco Lane and local code only allows one gate. AAE would be aware that it was only allowed one gate, but did nothing to remedy the injunction forcing Defendants to restore both gates – which Defendants argue demonstrates AAE's unclean hands and bad faith.

AAE filed a Motion to Amend Preliminary Injunction and continued to request that Defendants construct new fencing along the easternly boundary of El Caballo Loco Lane "regardless of the status of gate permits." (SSUF 27; RJN, Ex. V, p. 2 of Proposed Order, ¶2) This shows AAE's disregard for the law in an attempt to force Defendants to restore AAE's illegal fencing and gates. An administrative hearing officer for El Dorado County had already made a determination that any gates on Bayley Lane would require a permit and the agricultural exception would not apply; the same logic applies to require a permit for gates on El Caballo Loco Lane. A hearing officer for the County of El Dorado issued an Administrative Order dated April 9, 2021, concerning gates that AAE constructed on Bayley Lane. (RJN, Ex. J.) Similarly, El Caballo Loco Lane is a non-county-maintained roads within a residential subdivision consisting of two or more lots, and the agricultural issue still does not apply because the same parcels are still at issue. Therefore, a permit is required for gates on El Caballo Loco Lane, and Plaintiff's insistence that Defendants move forward regardless of the status of permits is simply a violation of the law.

Defendants argue that Plaintiff created a nuisance for Defendants by hindering Defendants' access through the roads with gates. When Plaintiff found out that gate permits are required and only one gate is allowed on each road, Plaintiff continued that nuisance in bad faith

and inflicted damages on Defendants. A Notice of Pendency of Action ("Lis Pendens") was recorded in El Dorado County. (RJN, Ex. X.) Defendants have not been able to obtain a loan because of the Lis Pendens, and as a result have not been able to build a home on their properties. (Alex Decl., ¶ 3; Declaration of Laura Byrd Rodarte ["Laura Decl."] ¶ 2; Declaration of Joshua Rodarte ["Joshua Decl."], ¶ 2; Declaration of Terry Wilson ["Terry Decl."], ¶ 2.) Defendant Alexander Byrd has had to rent a place to live instead of building and owning his own home. (Alex Decl., ¶ 3.) Additionally, Defendants would have obtained a loan at a lower interest rate—around three percent—when this case was initiated and the Lis Pendens was recorded. (Alex Decl., ¶ 3; Laura Decl., ¶ 2; Joshua Decl., ¶ 2; Terry Decl., ¶ 2.) Now, once this case is resolved, the interest rate for a loan will be much higher, maybe double the rate of what it would have been when this case started. (Alex Decl., ¶ 3; Laura Decl., ¶ 2; Joshua Decl., ¶ 2; Terry Decl., ¶ 2.) Defendants estimate that they have incurred damages of approximately $150,000. (Alex Decl., ¶ 3; Laura Decl., ¶ 2; Joshua Decl., ¶ 2; Terry Decl., ¶ 2)

AAE has attempted to force Defendants to build new fencing to contain AAE's livestock, but it is AAE's responsibility to contain its own livestock. "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . . ." (Civ. Code § 1714.) El Dorado County Code section 6.12.070 also imposes on the owner of livestock the duty to keep animals from straying or running at large on a public street. (RJN, Ex. W.) AAE's attempt to place the responsibility on Defendants is a show of unclean hands.

b. <u>Declaratory Relief</u>

Plaintiff seeks a judicial determination of the parties' respective rights and duties, including Plaintiff's right to fence the perimeter of the AAE Property and to install gates. (SSUF, ¶ 12; RJN, Ex. I, p. 10, ¶ 64.) However, Defendants argue that Plaintiff has acted inequitably when it comes to the fencing and gating across the easements. In *Fladeboe v. American Isuzu Motors Inc.,* the court found that Plaintiffs had acted inequitably based on their violations of the California Vehicle Code. ((2007) 150 Cal.App.4th 42, 57.) In violation of the Vehicle Code, Plaintiffs failed to notify Defendant, a car manufacturer, and to obtain Defendant's consent before transferring a dealer's franchise. (*Id.*) Plaintiffs subsequently filed for declaratory relief, alleging that Defendant unreasonably withheld consent to transfer the dealership. (*Id.* At 53.) The court found that Plaintiffs' Vehicle Code violations directly related to the cause of action, and the unclean hands doctrine provided a complete defense to the declaratory relief cause of action. (*Id.* At 57-58.) Similarly, in this case, Plaintiff's violations of El Dorado County codes and/or ordinances relate to its cause of action for declaratory relief as it pertains to fencing and gating across the easements, and the unclean hands doctrine provides a complete defense to its request for declaratory relief. Plaintiff instituted this action and filed for declaratory relief in bad faith because it knew that the gates across the easements were in violation of local law, and yet

insisted upon Defendants being ordered to restore them. Much as in *Fladeboe*, violations of local law directly relate to the cause of action for declaratory relief, and the unclean hands doctrine constitutes a complete defense.

Plaintiff argues that two of the three points relied on by Defendant in arguing unclean hands, are the subject of factual dispute – whether Plaintiff blocked Defendants' access through the roads traversing the AAE property and whether Plaintiff has violated El Dorado County code section 130.30.090. The third point is that Plaintiff filed a motion to amend the preliminary injunction, but Plaintiff disputes that it has been uncooperative.

Plaintiff next addresses the first prong is testing for unclean hands, which is reviewing analogous case law. Defendants provide only one such case and only as to "the declaratory relief" cause of action, which precludes meaningful analysis of defendants' arguments as to the balance of the complaint. (Memorandum, pp. 16:8-17:2.) Without analogous case law, the defense fails and summary judgment should be denied. (*East West Bank v. Rio School Dist.* (2015) 235 Cal.App.4th 742, 751-752.) In any event, *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42 is not on point. In *Fladeboe*, the plaintiff had violated a state law that directly governed the contractual relationship between the parties and that violation caused the harm for which the plaintiff sought to recover from the defendant.

In regard to whether Plaintiff has violated El Dorado County Code §130.30.090, Plaintiff argues that it has no bearing on the defendants' duty and ability to abide by the same ordinance. The defendants have been ordered by this court to get their own gate permits, which they would have long since acquired with a good-faith application and a modicum of diligence.

The second and third prongs of the analysis evaluate the nature of the alleged misconduct and its relationship to the injuries claimed by the plaintiff. Here, the construction of a gate at the boundaries of plaintiff's property is not the nefarious behavior the doctrine of unclean hands envisions. Instead, it is the gravamen of this lawsuit itself—it is the right the parties are litigating over. Either plaintiff is entitled to put up a gate or it is not, which is a mixed question of law and fact for the court that cannot be cut short by the conclusory assertion that Mr. Byrd's access was "blocked" and that this blockage is unfair. And again, a purported violation of El Dorado County's gate permit ordinance does not concern the defendants or their ability to get a gate permit of their own and has no direct relation to plaintiff's private property rights with respect to gates.

2. <u>ISSUE PRECLUSION</u>

"Issue preclusion prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. . . . [I]ssue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in

the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings LLC v. Faeber* (2015) 61 Cal.4th 813, 824-825) Issue preclusion applies to prior administrative adjudications "where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims." (*County of L.A. v. Dep't of Indus. Relations* (1989) 214 Cal.App.3d 1538, 1544)

Defendants argue that the doctrine of issue preclusion bars Plaintiff from relitigating the issue of its right to place gates on the roads because this issue has already been decided in an Administrative Order dated April 9, 2021. First, as to the element of final adjudication, it is clear that the judgment is final. A hearing officer for the County of El Dorado issued an Administrative Order dated April 9, 2021, concerning gates that AAE constructed on the Highway 49 Easement. (RJN, Ex. J.) This order has not been disturbed by an appeal. Therefore, it is a final adjudication.

Second, the same issue is present in this case and the administrative proceeding. The Administrative Order's statement of issue is "whether Section 130.30.090 of the El Dorado County Code requires [AAE] to obtain an administrative permit in order to install or maintain gates along the [Dirt] Road." (SSUF, ¶ 14.) At issue in this case is AAE's right to fence and gate the AAE Property. (SSUF, ¶ 12.) Thus, the same issue is presented in both proceedings.

Third, the issue of Plaintiff's gates was actually litigated and necessarily decided in the first suit—the administrative proceeding. AAE filed a Respondent's Brief dated March 10, 2021. (RJN, Ex. K.) The brief once again holds out the argument that El Dorado Code section 130.30.090 does not apply to gates that service agricultural uses such as those installed by AAE. (SSUF, ¶ 13.) However, the Administrative Order states that the agricultural exception does not apply and that AAE was required to obtain an administrative permit in order to install gates on Bayley Lane because it was found to be a road and section 130.30.090 applied. (SSUF, ¶ 14.) The issue of placing gates on the AAE Property was actually litigated because it was raised in AAE's Respondent's Brief and was actually submitted to the Administrative Hearing Officer. Moreover, the issue was actually and necessarily decided by the Administrative Order. Without a finding that Bayley Lane is a road within the meaning of El Dorado County Code, AAE would not be required to obtain a permit to install gates along the road. Without a finding that the agricultural use exception does not apply to the AAE Property, AAE would have been exempted from obtaining a permit. Hence, these issues were not entirely unnecessary to the decision in the Administrative Order.

Lastly, Defendants argues that the issue is being asserted against a party to the prior action. In the administrative proceeding, AAE was the respondent and now the issue is being asserted against AAE.

In summary, Defendants conclude the Administrative Order should be afforded preclusive effect because the County of El Dorado was acting in a judicial capacity, the hearing officer resolved the issue before it, and all parties were given the opportunity to fully and fairly litigate their claims. The issue of gates on the AAE Property came before a hearing officer who considered AAE's and El Dorado County Code Enforcement Division's positions on the matter. An Administrative Order was issued dated April 9, 2021. (RJN, Ex. J.) Therefore, the County was acting in a judicial capacity, and the hearing officer resolved the issue before it, thereby deciding that El Dorado County Code 130.30.090 required AAE to apply for a permit in order to install gates across the roads on its property. There is also no question that the parties were given an opportunity to fully and fairly litigate their claims. AAE filed a Respondent's Brief dated March 10, 2021. (RJN, Ex. K.) The brief once again holds out the argument that El Dorado Code section 130.30.090 does not apply to gates that service agricultural uses such as those installed by AAE. (SSUF, ¶ 13.) AAE was given a chance to make its argument before the hearing officer, and the Administrative Order shows that AAE's brief was considered before reaching a decision.

Plaintiff responds that Defendants fail to address the exact issue that is precluded in this action and how any such preclusion is dispositive as to the entirety of Plaintiff's pleadings. The only issue decided in the referenced administrative proceeding was the applicability of El Dorado County Code section 130.30.090 to the roads across plaintiff's property. Because it was found to be applicable, plaintiff obtained the required administrative permit for its gates. But that has no logical bearing upon plaintiff's private property right to erect the gate in the first place and it certainly is not dispositive as to any cause of action before the court.

3. <u>LACK OF RIPENESS</u>

"Ripeness is analyzed under a two-pronged test. The first prong requires consideration of the issues' 'fitness for 'judicial decision.' An issue is fit for judicial decision when it is 'definite and concrete' and 'admit[s] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' The second prong is one in which we must consider 'the hardship to the parties of withholding court consideration.'" (*Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1580 [citation omitted].)

At issue here is Plaintiff's request for a determination that it has a right to install fencing and gates on its property, specifically on the two road easements. On June 22, 2020, Plaintiff filed a Verified Complaint for Trespass to Real Property, Trespass to Chattel, Nuisance, Quiet Title to Real Property, and Declaratory Relief. (RJN, Ex. I.) AAE sought a judicial declaration and to quiet its title so as to make it clear that it can fence and gate the perimeter of the AAE Property in order to contain and raise livestock and to secure its real estate. (SSUF, ¶ 12; RJN, Ex. I, p. 9, ¶ 61, and p. 10, ¶ 64.) However, this issue is not yet ripe for this Court's determination

because Plaintiff does not even have permits to place those gates on the easements to begin with.

Defendants argue that the issue of Plaintiff's right to place gates on the easements does not admit of specific relief through a decree of a conclusive character because this Court does not have a conclusive say on whether gates will be permitted on the AAE Property, and thus this issue already fails the first prong of the ripeness analysis. This issue also fails the second prong of the analysis because the parties will not suffer hardship by withholding a judicial decision. Instead, withholding a judicial decision gives the parties time to try to obtain permits for gates on the roads, and avoids the possibility of a court order that could be overridden by a contrary decision by El Dorado County.

Plaintiff argues that the pleadings show that there was an actual controversy between the parties at the time the complaint was filed, which, as the court knows, continues through the present. Fences and gates were put up and forcibly torn down prior to this action being filed and even while this action was pending. Plaintiff does not seek an advisory opinion based upon a hypothetical set of facts. Plaintiff needs a definitive decision from this court as to the parties' rights and duties with respect to the use of plaintiff's real property. If that declaratory judgment includes a provision addressing the need for and scope of any permits that may be required, such a provision would be appropriate What is not appropriate is to put off a final judgment until permits are obtained based upon a hypothetical entitlement to construct such a gate that will only be confirmed after a subsequent court ruling.

TENTATIVE RULING #7c:

5. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
6. **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY, SUMMARY ADJUDICATION 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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY

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

8. 22CV1011 SHINGLE SPRINGS BAND OF MIWOK INDIANS v. FLINTCO PACIFIC, INC. ET AL

Demurrer to First Amended Complaint
Demurrer to Third Amended Cross-Complaint

The underlying action filed by the Shingle Spring Band of Miwok Indians ("Miwok Tribe") alleges design and construction deficiencies in concrete slabs installed at the Shingle Springs Ambulatory Clinic project ("Project").

Defendant Flintco Pacific, Inc. and Cross-Defendant Urata & Sons Concrete, Inc. have filed separate demurrers in this action.

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).

Demurrer to First Amended Complaint

Defendant/Cross-Complainant Flintco Pacific, Inc. ("Flintco") demurs to the Third Cause of Action in the First Amended Complaint (Concealment) filed by the Shingle Springs Band of Miwok Indians ("Plaintiff") on the grounds that it fails to state facts sufficient to constitute a cause of action and is uncertain, ambiguous and unintelligible.

Specifically, Flintco argues that with respect to the Third Cause of Action, the FAC alleges that Flintco fraudulently concealed defects in the construction of the Project from Plaintiff, misrepresented "faulty construction," and engaged in "subsequent construction work meant to hide certain defects." (FAC ¶ 42) However, Flintco argues that the FAC does not include facts which show how, when, where, to whom, and by what means Flintco is alleged to have concealed information from Plaintiff, including (1) what information Flintco allegedly concealed from Plaintiff; (2) how Flintco willfully concealed that information; (3) any facts to support an allegation that Flintco acted with an intent to deceive Plaintiff; (4) what knowledge Flintco had

of the information it allegedly concealed from Plaintiff; and (5) what knowledge Flintco had of Plaintiff's ignorance of the allegedly concealed information.

Flintco asserts that the FAC is defective because it does not allege sufficient facts with the requisite specificity to support the cause of action of concealment. The elements of an action for fraud and deceit based on concealment are:

> (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. (BAJI No. 12.35 (7th ed. 1986).)

Mktg. W., Inc. v. Sanyo Fisher (USA) Corp., 6 Cal. App. 4th 603, 612–13 (1992).

First, Flintco argues that the FAC does not specify what actions Defendant Flintco took that would amount to concealment as opposed to any other entity. Plaintiff had initially included the firm Buehler Engineering, Inc., which designed the Project, as a Defendant, but the case directed at Buehler Engineering, Inc. was dismissed at Plaintiff's request before the FAC was filed. Flintco filed a Cross-Complaint that brought Urata & Sons Cement, Inc. ("Urata") into the action, but Urata is not named as a Defendant in the FAC and was never named as a Defendant by Plaintiff. Accordingly, while the use of the plural "Defendants" in the FAC is not precise, the fact is that there is only one named Defendant in the FAC and as such, it cannot be said that the identity of the actor associated with the FAC's allegations is uncertain, ambiguous or unintelligible.

Second, Flintco indicates that a cause of action based on fraud must be pleaded with particularity, including pleading "*facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" Stansfield v. Starkey, 220 Cal. App. 3d 59, 73 (1990) (citations omitted).

> 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); *see also* Reeder v. Specialized Loan Servicing LLC, 52 Cal. App. 5th 795, 804 (2020).

When alleging fraud against a corporate defendant, Flintco argues that the pleadings must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." Tarmann v. State Farm Mut. Auto. Ins. Co., 2 Cal. App. 4th 153, 157 (1991) (citations omitted).

Additionally, Flintco argues that the FAC is defective because it fails to plead a causal connection between the Plaintiff's reliance on the defendant's representation and the alleged injury. Serv. by Medallion, Inc. v. Clorox Co., 44 Cal. App. 4th 1807 (1996).

Flintco's authorities largely address representations, not omissions. By definition, the rules of Tarmann and Stansfield regarding fraudulent representations cannot be applied to omissions; omissions are not made by or to a specific individual, they are not made orally or in writing, and the specifics of an omission cannot be described.

Plaintiff has alleged that Defendant concealed or suppressed a material fact (FAC ¶¶39-40, 44); the Defendant was under a duty to disclose the fact to the Plaintiff (FAC ¶39); the Defendant intentionally concealed or suppressed the fact with the intent to defraud Plaintiff (FAC ¶¶42, 44); Plaintiff was unaware of the fact and would have acted differently if it had known of the concealed or suppressed fact (FAC ¶45); and as a result of the concealment or suppression of the fact, the Plaintiff sustained damage (FAC ¶¶46-47). The court finds that the allegations are sufficient to put Flintco on notice of the nature of the charges made and to prepare its defense. Stansfield v. Starkey, 220 Cal. App. 3d at 73.

Demurrer to the Third Amended Cross-Complaint

Cross-Defendant Urata demurs to Flintco's Third Amended Cross-Complaint on the basis that Flintco's claims against Urata were time-barred as of April 7, 2022.

Urata cites Code of Civil procedure § 337.15(a)(1), which states:

> (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:
>
> (1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

The initial Cross-Complaint was filed on November 14, 2022. An amended Cross-Complaint was filed on December 8, 2022. On September 7, 2023, the court granted Urata's demurrer to the Cross-Complaint with leave to amend. A Second Amended Cross Complaint was filed on September 11, 2023. Following a hearing on Urata's demurer to the Second Amended Cross Complaint on February 2, 2024, the court sustained the demurrer with leave to amend. The Third Amended Cross-Complaint ("TACC") was filed on February 16, 2024.

Request for Judicial Notice

Urata requests the court to take judicial notice of several documents and pleadings on file with the court 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). 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, Defendant's request for judicial notice is granted.

Analysis

The Notice of Completion for the construction of the Project identifies September 2, 2011 as the date of completion, and the Notice was recorded on October 7, 2011. The court sustained demurrers to the two prior Cross-Complaints by application of the ten-year statute of limitations set forth in Code of Civil Procedure § 337.15.

Flintco asserts that a new allegation in the TACC overcomes the ten-year statute. That allegation states that Urata entered into a subcontract with Flintco that holds Urata liable for "defects in the Work for the same period Flintco remains liable to the Owner under the General Contract, or as required by law, whichever is greater." Flintco argues that this new allegation presents a novel legal issue of first impression distinguishable from the case of FNB Mortgage Corp. v. Pac. General Corp. 76 Cal.App.4th 1116 (1999), which was a principal authority supporting Urata's demurrer to the prior two Cross-Complaints. Flintco further argues that a strong public policy in favor of equitable apportionment among parties requires a decision to keep Urata in the lawsuit notwithstanding the ten-year statute of limitations.

At this point, it is helpful to re-iterate the chronology of events that was set forth in the court's February 2, 2024, Tentative Ruling on the demurrer to the Second Amended Cross-Complaint:

- The Notice of Completion of the Project was dated September 2, 2011, and was recorded on October 7, 2011.
- On December 17, 2021, the Miwok Tribe and Flintco Pacific entered into a tolling agreement to extend the statute of limitations under May 19, 2022.
- On May 19, 2022, The Miwok Tribe and Flintco Pacific amended the tolling agreement to extend the limitations period to July 29, 2022.
- The Miwok Tribe filed its initial Complaint in this matter on July 22, 2022.
- Flintco Pacific filed its Cross-Claim against Urata on November 14, 2022, and then filed an Amended Cross Complaint ("ACC") on December 8, 2022.
- Following the court's sustaining of Urata's demurrer on September 1, 2023, Flintco Pacific filed the SACC on September 11, 2023.
- The Miwok Tribe filed a First Amended Complaint ("FAC") on October 27, 2023.
- Following the court's sustaining of Urata's demurrer on February 2, 2024, the Third Amended Cross-Complaint was filed on February 16, 2024.

Urata highlights the fact that Flintco elected to enter into a tolling agreement with Plaintiff that was executed after the statute of limitations had already expired, and to which Urata was not party. Urata characterizes this tolling agreement as Flintco's "offer to repair", and at the time it was made, Flintco was no longer liable to Plaintiff. Thus, Flintco cannot rely on any contractual language purporting to extend Urata's liability for so long as Flintco remains liable. Accordingly, if Flintco now remains liable to Plaintiff pursuant to its unilateral decision to enter into that stipulation, the consequences of that agreement do not implicate Urata.

Urata cites Lantzy v. Centex Homes, 31 Cal. 4th 363 (2003) and that case's analysis of the ten-year statute of limitations. That case discussed the legislative history of Section 337.15 at length, and concluded that:

> [T]he Legislature, faced with a developing body of common law on the subject, carefully considered how to provide a fair time to discover construction defects, and to sue upon such defects if necessary, while still protecting a vital industry from the damaging consequences of indefinite liability exposure. For latent deficiencies, the lawmakers rejected shorter periods in favor of a limit in the upper range of those previously adopted by other jurisdictions. Moreover, by placing exemptions in the latent defect statute for personal injury, willful misconduct, and fraudulent concealment, the legislators demonstrated an intent to pick and choose the particular exceptions they wished to allow and those particular aspects of the prior case law they wished to embrace. The implication arises that except as stated, and for important policy reasons, the Legislature meant the generous 10–year period set forth in section 337.15 to be firm and final.

Lantzy v. Centex Homes, 31 Cal. 4th at 377.

The court concluded that to hold otherwise would "directly undermine the statutory purpose" Id. at 378.

> [S]uch a rule would allow "[a]n unsuspecting subcontractor [to] be sued for indemnity, long after the statute's 10–year limitations period had passed, and despite the absence of any action alleging defects within the 10–year period, simply because the indemnitee (the subsequent cross-complainant) was deemed to have tolled the 10–year period [by offering or attempting to repair] and was thus subject to subsequent suit.

Lantzy v. Centex Homes, 31 Cal. 4th at 378, citing FNB Mortg. Corp. v. Pac. Gen. Grp., 76 Cal. App. 4th 1116, 1133 (1999).

As discussed in Lantzy, the ten-year statute of limitations contained in Section 337.15 represents and extensive analysis of public policy implications by the Legislature, and Flintco's arguments in favor of extending the limitations period beyond the express statutory time limits has been considered and rejected by the California Supreme Court.

TENTATIVE RULING #8:

(1) CROSS-DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
(2) DEFENDANT FLINTCO'S DEMURRER IS OVERRULED.
(3) CROSS-DEFENDANT URATA'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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

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

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

9. 22CV0349 SULES v. NIEKARZ

Order of Examination Hearing

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 28, 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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10. 23CV1220 ORION 50 OUTDOOR, LLC ET AL v. SUREWAY PAVING, INC.

Order of Examination Hearing

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 28, 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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