July 12, 2024
Dept. 9
Tentative Rulings

1.	**24CV1059**	**JG WENTWORTH ORIGINATIONS, LLC**
Transfer of Payment Rights		

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits B and E to the Petition. *See also,* Petition at p. 4.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. In this case, it is not clear that the required disclosure statement was provided at least ten days prior to the execution of the transfer agreement, as required by Cal,. Ins. Code § 10136, because both documents were executed on May 13, 2024. See Exhibits A and B.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. In this case, the Petition (which is verified by a Vice President of J.G. Wentworth) at page 8 represents that Payee has no court-ordered child support obligations. However, there is no Affidavit by Payee.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests**.** The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition submitted generally contains the information required by the Insurance Code for court approval of this transaction, however, its representations are verified by the Petitioner, not by the payee.

Some information required by the statutes was included in the Petition through a verified statement of the Petitioner, but without any representation by the payee themself, such as:

1. Whether there are any court orders for child or spousal support;
2. The purpose of the proposed transfer;

3. The payee's financial/economic situation;
4. Whether the payments to be transferred are required for future medical care or necessary living expenses;
5. Whether the payee was satisfied with the terms of prior payment transfer agreements that she had entered into;
6. Whether, within the past five years, the payee has attempted to enter into any such agreement with this Petitioner or any other entity that were denied by a court, or that were withdrawn or dismissed prior to a determination on the merits;
7. Whether the payee or their family are facing a hardship situation.

This court cannot grant this Petition in compliance with the applicable statutes, without more information as described above, either through submittal of a declaration of the Payee, or by appearance and testimony. The Petition also fails to include the Payee's name and address, and name and address of the minor dependent. This information may be provided orally at the hearing pursuant to §10139.5(d).

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, JULY 12, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

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

2.	**PC20200643**	**WOOD ET AL v. CANDLELIGHTER LIMITED**
Motion to Compel		

On January 26, 2024, Defendant/Cross-Complainant propounded the Demand for Production of Documents and Plaintiff's response was due March 1, 2024, at 10:00 AM. On March 1, 2024, Plaintiff served a Response to Demand for Production of Documents, Set One.

On April 1, 2024, Defendant/Cross-Complainant granted Plaintiff an extension until April 5, 2024, to provide further documents and on April 2, 2024, Plaintiff granted Defendant an extension for filing to Motion to Compel. The deadline for filing the Motion was May 20, 2024.

On April 5, 2024, Defendant received an email from Plaintiff with documents but no written response. On May 1, 2024, Defendant received a thumb drive from Plaintiff that contained documents but no written response.

On May 17, 2024, Defendant requested an extension to filing the Motion to Compel but received no response from Plaintiff. Defendant asserts that they had to file the Motion without further meet and confer efforts, due to the deadline.

Motion to Compel Further Responses and Imposition of Monetary Sanctions Regarding Demand for Production of Documents, Set One Served on J. Richard Wood as Trustee of the Elizabeth L. Kalashnikoff Revocable Family Trust on January 26, 2024

Defendant replied to the Responses to Request for Production of Documents, Set One with several repetitive issues: (1) the responses do not meet the standards of CCP 2031.230 because they fail to state that a diligent search and reasonable inquiry were made in an effort to comply with the demand; (2) the responses do not set forth the name and address of any natural person or organization known or believed by Plaintiff to have possession, custody, or control of that item or category; (3) the responses do not meet the standards of CCP 2031.220 because they do not state whether they were in whole or in part and there is no way of knowing if documents are missing, as well as no statement of compliance or noncompliance; (4) the response was incomplete pursuant to CCP 2031.310; (5) the documents attached did not identify the specific request number to which the documents responded or correlated and defendant received documents twice with no written response; (6) the response indicates documents do not exist, but does not clarify if the documents never existed or merely do not exist now, CCP 2031.230; (7) if the document is no longer in plaintiff's possession, plaintiff needs to identify the document and state whether it is missing or lost, destroyed, transferred to others (and if so, whom) or otherwise disposed of; (8) objection based on relevance is not the appropriate standard or proper basis for objection in discovery, but should be whether or not the information being sought is reasonably calculated to lead to discoverable evidence; and, (9) objection based on attorney-client privilege do not state why the document would be attorney-client privilege, what the document is, and no privilege log was provided, CCP 2031.240(b),

2031.300(a), 2031.240(c)(1), *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116.

Plaintiff argues that Defendant failed to make meet and confer efforts to resolve the issues raised in the Motion. Plaintiff states that 26 of the 30 responses stated: "Documents falling within these Requests that are in the care custody and control of the Plaintiff will be produced." Plaintiff states this as all that is required under CCP 2031.210(a). The other four responses were never brought to Plaintiff to meet and confer. Plaintiff argues that the Motion was not accompanied by a declaration meeting the requirements of CCP 2016.040, which requires a meet and confer declaration in support of a motion, providing facts that establish a reasonable and good faith attempt at informal resolution. (CCP 2031.310(b)(2) The Court finds no such declaration was filed.

Motion to Compel Further Responses and Imposition of Monetary Sanctions Regarding Special Interrogatories, Set One Served on J. Richard Wood on January 26, 2024

Defendant replied to Plaintiff's Responses to the Special Interrogatories with the following: "Does not meet the standards of CCP 2031.310. Pursuant to CCP 2031.310 the Response is incomplete. The Response is vague and ambiguous." Separate Statement.

Defendant argues that the party demanding *production of documents*, Code Civil Procedure Section 2031.010 et seg. may make a motion, supported by specific facts showing good cause justifying the discovery sought by the demand, for an order compelling further response to the demand when, on receipt of a response to the demand, the party deems that [a statement of compliance with the demand is incomplete and/or a representation of inability to comply is inadequate, incomplete, or evasive and/or an objection in the response is without merit or too general] (Code Civ. Proc. §72031.310). Defendant's Motion incorrectly seems to only reference Production of Documents, except for in the conclusion.

Plaintiff argues that Notice of Motion is defective because it does not mention the special interrogatories, outside of the caption and is merely identical to the Notice filed in connection to the document production. The Court notes that while the introduction of the Notice references the Demand for Production of Documents, paragraphs 8 and 9 do correctly identify the Special Interrogatories. Plaintiff argues the same is true of the declaration in support of the Motion. The Court agrees that the Declaration seems to only relate to the Production of Documents.

Plaintiff argues that the Motion is time barred under CCP 2030.300, which requires the filing of a motion to compel further responses within 45 days of receiving verified responses or the right to compel further responses is waived. Plaintiff argues that verified responses to the Special Interrogatories were served by mail on March 1, 2024 and after adding five days for service by mail, Defendant's Motion was due by April 20, 2024. Plaintiff argues that there was no agreement to extend the time for filing the Motion, only to extend the time to compel the

document production. The Court agrees that based on the exhibits provided, the parties only agreed to an extension for the time to file the Motion to Compel Production of Documents. Exhibit C, page 56 and Exhibit F, page 62, of Decl. D. Foyil.

Plaintiff states that Defendant used the wrong governing statute in the Notice, Motion, Declaration, Memorandum of Points and Authorities and Separate Statement, and seemingly used the same pleadings from the Motion to Compel Further Responses to Document Production with the citations to that statute. Defendant references CCP 2031.010 et seq., which is the section related to document production.

Lastly, Plaintiff argues that a motion to compel must be accompanied by a meet and confer declaration under CCP 2016.040, and must show a reasonable and good-faith attempt at an informal resolution of each issue presented in the motion. The Court does not locate a meet and confer declaration detailing a reasonable and good-faith attempt at informal resolution.

Sanctions

Standard for Motion to Compel Responses to Requests for Production / Interrogatories (§ 2031.300(b) / § 2030.290(b)

1. The party making the demand may move for an order compelling response to the demand. If the motion is unsuccessful, the court shall impose monetary sanctions against the moving party (§ 2031.300(c) / § 2030.290(c))
2. If the other party opposes a motion to compel a response and loses, the court shall impose a monetary sanction against the opposing party (§ 2031.300(c) / § 2030.290(c))
3. The court does not have to impose sanctions against the unsuccessful party in a motion to compel if the court finds that the party subject to sanctions acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (§ 2031.300(c) / § 2030.290(c))

Defendant requests sanctions in the amount of $2,500 under both Motions.

The Opposition seems to include an error where it states “Plaintiff’s failure to meet and confer…” and the Court will assume this meant to say Defendant. Opp., p.4, l.24. Plaintiff argues that Defendant’s failure to meet and confer following the service of Further Responses before filing this Motion constitutes circumstances that would make the imposition of sanctions unjust. CCP 2033(e); see *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435-1436, 1439. However, that case addresses sanctions for failing to answer questions at deposition and the court specifically differentiates depositions from other forms of discovery. CCP 2033 does not exist as cited.

Further, in the Motion regarding the Special Interrogatories and the Motion regarding Document Production, Plaintiff argues that the Notice refers to the motion to compel regarding document request, fails to identify or otherwise notify Plaintiff that Defendant is seeking

sanctions against him, the code section(s) and/or basis of the sanctions, and the amount of sanctions sought. CCP 2023.040. Both Notices include in paragraph 8, a request for sanctions in the amount of $2,500, however, the other items noted by Plaintiff seem to be missing. The Notice filed with the Motion to Compel Further Responses Regarding Special Interrogatories does only reference the Document Production in the Introduction, but paragraphs 8-9 indicate that the Motion is being brought in regards to the Special Interrogatories.

Defendant requests that the motions be granted, that Plaintiff be ordered to further respond to the Demand for Production of Documents and Special Interrogatories, and that sanctions in the amount of $2,500 per motion be imposed.

Plaintiff argues that the Motions must be denied due to Defendant's failure to engage in a reasonable and good faither attempt to resolve informally each issue raised. Further, Plaintiff argues that the Motion to Compel Further Responses to the Special Interrogatories should be denied because it is time barred and references the wrong statute.

The Court grants Defendant's Motion to Compel Further Production of Documents but denies the request for sanctions under CCP §2031.300(c) due to counsel's failure to file a declaration detailing the good faith meet and confer efforts. The Court agrees that Defendant's Motion to Compel Further Responses to the Special Interrogatories is time barred, and therefore, sanctions against Plaintiff are not proper, but rather sanctions against Defendant are proper for bringing an unsuccessful motion.

TENTATIVE RULING #2:

1. **MOTION TO COMPEL FURTHER RESPONSES REGARDING DEMAND FOR PRODUCTION OF DOCUMENTS IS GRANTED.**
2. **IMPOSITION OF MONETARY SANCTIONS ON PLAINTIFF REGARDING PRODUCTION OF DOCUMENTS, SET ONE SERVED ON J. RICHARD WOOD AS TRUSTEE IS DENIED WITH THE COURT FINDING SUBSTANTIAL JUSTIFICATION FOR THE NONCOMPLIANCE DUE TO THE FAILURE OF DEFENDANT TO ENGAGE IN GOOD FAITH MEET AND CONFER EFFORTS.**
3. **MOTION TO COMPEL FURTHER RESPONSES REGARDING SPECIAL INTERROGATORIES, SET ONE SERVED ON J. RICHARD WOOD IS DENIED.**
4. **IMPOSITION OF MONETARY SANCTIONS ON PLAINTIFF REGARDING SPECIAL INTERROGATORIES, SET ONE SERVED ON J. RICHARD WOOD ON JANUARY 26, 2024, IS DENIED.**
5. **IMPOSITION OF MONETARY SANCTIONS ON DEFENDANT DUE TO UNSUCCESSFUL MOTION SHALL BE IMPOSED PURSUANT TO CCP § 2030.290(c)) IN THE AMOUNT OF $1,000.00.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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

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

3.	**PCL20180059**	**BENNETT v. RELIABLE MANPOWER, INC.**
Leave to Amend Judgment		

At the hearing on May 3, 2024, the motion to quash by Tahoe Green 2022, Inc. was granted and leave to amend judgment to add three entities was granted. The court ordered that a summons must be properly served to bring the parties into the case. A Summons was served on Konarak Inc. and filed on May 30, 2024. A Summons was served on Beyram Inc. and filed on May 30, 2024.

TENTATIVE RULING #3:

APPEARANCES REQUIRED ON FRIDAY, JULY 12, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

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

4.	**23CV1432**	**TD BANK USA v. AREVALO**
Motion to Deem Admitted		

On January 3, 2024, Plaintiff served a Request for Admissions (RFA") on Defendant as part of discovery in this lawsuit. Defendant had until February 17, 2024 to respond to the RFAs.[1] Defendant has not yet responded to this discovery. Plaintiff has filed this motion seeking to have the matters specified in the RFA deemed admitted, and served notice of the motion on Defendant by mail on May 6, 2024 (proof of service merely states "5/6" but the document was filed May 9, 2024).

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

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7

[1] With the exception of unlawful detainer actions, "[w]ithin 30 days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response." Code of Civil Procedure § 2033.250(a).

(commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Defendant failed to respond timely, so the specified matters are deemed admitted.

TENTATIVE RULING #4:

PLAINTIFF'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS GRANTED, PENDING RECEIPT OF AN AMENDED PROOF OF SERVICE INDICATING THE YEAR OF SERVICE.

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.

5.	23CV1460	SCHNEIDER v. GOLD RUSH ENERGY SOLUTIONS
Motion for Judgment on the Pleadings		

Cross-Complainants Gold Rush Energy Solution ("Gold Rush") and Jordan Lykins ("Lykins") (collectively "Cross-Complainants") bring a Motion for Judgment on the Pleadings against Cross-Defendant Mark Schneider's ("Schneider" or "Cross-Defendant") failure to file a verified and code-compliant Answer to the Verified Cross-Complaint.

Schneider initiated the present litigation by filing a Complaint on August 25, 2023, alleging various wage and hour violations. On December 1, 2023, Gold Rush filed its Answer, and filed a Verified Cross-Complaint, alleging that Schneider intentionally falsified his timecard records in order to defraud Gold Rush and that Schneider engaged in a repeated pattern of harassment of company executives, including Lykins, following his termination from Gold Rush.

Cross-Complainants granted Cross-Defendant a 30-day extension for filing his responsive pleading. Cross-Defendant filed an Answer on February 2, 2024, which Cross-Complainants argue was not verified and contained only general denials and affirmative defenses.

Counsel for Cross-Complainants state that they spoke with counsel for Cross-Defendant in an effort to meet and confer about alleged procedural deficiencies in the Answer. Cross-Defendant's counsel allegedly indicated that a proper verified Answer would be filed within 3 weeks, by April 19, 2024.

On April 18, 2024, counsel for Cross-Complainants allege that opposing counsel once again requested an extension, and that they allowed Cross-Defendant another 3-week extension. Thereafter, Cross-Defendant's counsel purportedly requested yet another extension to file a properly verified Answer. Counsel for Cross-Complainants allege they sent Cross-Defendant's counsel a letter attempting further meet and confer efforts, and provided Cross-Defendant a two week extension to file an Amended and Verified Answer before Cross-Complainants stated they would proceed with a Motion.

On May 17, 2024, counsel for Cross-Complainants alleges that they again spoke with counsel for Cross-Defendant, who indicated that an Amended and Verified Answer could not be filed by the current deadlines and requested a further extension through the end of June 2024. Cross-Complainants counsel did not agree to the further extension and indicated their intention to proceed with this Motion.

Cross-Complainants filed the Motion for Judgment on the Pleadings on May 28, 2024. Cross-Defendant has since filed a verified Answer on June 21, 2024.

Standard of Review

When the moving party is the plaintiff, a motion for judgment on the pleadings may be granted where "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc. § 438(c)(1)(A).) The grounds for the motion shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice (Code Civ. Proc. § 438 (d).) Except as provided by statute, a motion for judgment on the pleadings is analyzed like a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Thus, on a motion for judgment on the pleadings, the Court may extend consideration to matters that are subject to judicial notice; in doing so, the Court performs essentially the same task as ruling on a general demurrer. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 146.)

Procedural Requirements

Pursuant to CCP 438(f), it is proper to bring a Motion for Judgment on the Pleadings at this time, because the time period to demur to the Answer has passed.

Counsel for Cross-Complainants has complied with the meet and confer requirements of CCP 439(a)(3). *Decl. B. Gonzalez.*

Argument

Cross-Complainants allege: (1) that Cross-Defendant's unverified Answer runs afoul of Code of Civil Procedure section 446(a), which requires an answer to be verified where the complaint is verified; (2) that the unverified Answer is comprised entirely of general denials and blanket affirmative defenses in violation Code of Civ. Proc. § 431.30(d), which requires an answer to a verified complaint to positively admit or deny each of the specific allegations in the verified complaint; (3) that Cross-Complainants have given Cross-Defendant multiple opportunities spanning several months to amend and verify the Answer, but Cross-Defendant has still been unable to produce an Amended and Verified Answer; (4) that as a result of the deficiencies in Cross-Defendant's Answer, Cross-Defendant is deemed to have admitted all of the allegations set forth in the Verified Cross-Complaint; (5) that Cross-Defendant's Answer does not state facts sufficient to constitute a defense to the properly pleaded allegations and causes of action in the Verified Cross-Complaint; and, (6) that Cross-Complainants are entitled to judgment on the pleadings against Cross-Defendant as to the entirety of their Verified Cross-Complaint.

Unverified Answer

CCP 446(a) requires a verified answer in response to a verified complaint. A pleading is properly verified when it is coupled with an affidavit of the party stating "that the same is true of his own knowledge, except as to the matters which are therein stated on his or her information

or belief, and as to those matters that he or she believes it to be true." (Code Civ. Proc. § 446(a)) Cross-Complaint was filed December 1, 2023, and included a verification by Lykins on his own behalf and on behalf of Gold Rush as its CEO. The Answer filed on February 2, 2024, does not contain a verification. Cross-Defendant has since filed a verified Answer on June 21, 2024.

Answer Contains Only Improper General Denials

CCP 431.30(d): "If the complaint is verified…the denial of the allegations shall be made positively or according to the information and belief of the defendant." Section 431.30(f) further details the proper manner of denying allegations:

> "The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint; or by express admission of certain allegations of the complaint with a general denial of all of the allegations not so admitted; or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted."

Cross-Complainant argues that because the Cross-Complaint is verified, the Answer must specifically deny each allegation and each denial must be made positively or according to Cross-Defendant's information and belief.

Cross-Defendant argues that the newly filed Answer includes specific denials to Cross-Complainants' material allegations. In his opposition, Cross-Defendant states: "Further, 'a general denial denies in one sentence all the allegations of the complaint.'" *Walsh v. West Valley Mission Community College District* (1998) 66 Cal.App.4th 1532, 1545. He argues that the Answer "at no point asserts a lone one-sentence general denial…" (Opp., p. 3) However, the verified Answer, under "General Denial", states: "…Cross-Defendant generally and specifically denies each and ever allegation contained in the Cross-Complaint and further denies that Cross-Complainants have suffered any damages by reason of any act or omission on Cross-Defendant's part." (Verified Answer, p.2)

Cross-Defendant further argues that his affirmative defenses are detailed and fact specific, and "are not blanket statements." (Opp., p.3) The Opposition provides the affirmative defense of "Unclean Hands, Waiver and Estoppel" as examples of these "detailed and fact specific" defenses. (Opp., p.3) Cross-Defendant argues the unverified Answer gave Cross-Complainants notice so that it could prepare its case.

Cross-Complainant replies that the verified Answer contains only a general denial and twenty-six affirmative defenses, but does not specifically admit, deny, answer, or even reference any paragraphs of portions of the verified Cross-Complaint. The Court agrees.

Defective Answer is an Admission of the Allegations in Cross-Complaint

Cross-Complainants argue that an unverified answer to a verified complaint constitutes an admission of the allegations in the verified complaint. *Hearst v. Hart* (1900) 128 Cal. 327, 328; *Central Bank v. Sup. Ct.* (1978) 81 Cal.App.3d 592, 600. Cross-Complainants further assert that the purpose of this rule is to "protect the interests of private parties by relieving them of the unreasonable burden of undergoing a full-scale trial to prove verified allegations which the defendant is unwilling to deny under penalty of perjury." *DeCamp v. First Kensington Corp.* (1978) 83 Cal.App.3d 268, 278.

Cross-Complainants argue that when defendants file an unverified answer to a verified complaint, the plaintiff may either move to strike the answer and seek default or may move for a judgment on the pleadings. *Hearst v. Hart*, *supra*, at 328.

Lastly, Cross-Complainants argue that Code of Civil Procedure Section 438 provides that a defective/unverified answer cannot, as a matter of law, "state facts sufficient to constitute a defense to the complaint." (See Code Civ. Proc. § 438(c)(1)(A))

Cross-Complainant argues that the unverified Answer serves as an admission to each and every allegation and cause of action contained in the Verified Cross-Complaint, and that if Cross-Defendant cannot deny the allegations under penalty of perjury, then Cross-Defendant will be unable to state facts sufficient to constitute a defense to the verified Cross-Complaint.

While the newly filed Answer contains a verification, it still appears defective because it fails to state facts sufficient to constitute a defense.

Verified Cross-Complaint Sufficiently Pleads Every Cause of Action

A plaintiff is entitled to judgment on the pleadings "if his complaint states facts sufficient to constitute to cause of action and the answer neither raises a material issue nor states a defense." (*Barasch v. Epstein* (1957) 147 Cal.App.2d 439, 440.) Cross-Complainants argue this once again reflects that statutory language of Code of Civil Procedure Section 438, entitling a plaintiff to judgment on the pleadings where "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc. § 438(c)(1)(A).

Conversion

Cross-Complainants argue that: "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.)

In the Cross-Complaint, Cross-Complainants allege that Cross-Defendant intentionally falsified his timecard records to overstate his hours worked and obtain unearned compensation

that rightfully belonged to Gold Rush, and that Gold Rush was subsequently damaged when it indeed compensated Cross-Defendant based on the fraudulent timecards. (Cross-Complaint, ¶¶ 29-31.)

Fraud

Cross-Complainants argue that: "A complaint for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages." (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.)

They argue the Cross-Complaint states that Cross-Defendant intentionally and knowingly falsified his timecard records with the intent to deceive Gold Rush into overcompensating Cross-Defendant in reliance on the falsified timecards, and that Gold Rush was subsequently damaged when it indeed compensated Cross-Defendant in justifiable reliance on the fraudulent timecards. (Cross-Complaint, ¶¶ 35-40.)

Negligence

Cross-Complainants argue that: "The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.'" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.) Here, the Cross-Complaint alleges that Cross-Defendant owed a duty to use due care to accurately report and certify his time cards, that Cross-Defendant breached this duty by inaccurately overstating his hours on at least one-hundred and seventy separate days and that, as a result, Cross-Complainants suffered monetary harm in the form of overpaid wages to Cross Defendant and related payroll taxes as a result of Cross-Defendant's breach (Cross-Complaint, ¶¶ 43-45.)

Negligent Misrepresentation

Cross-Complainants argue that: "Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages to that person." (*SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154.)

The Cross-Complaint alleges that Cross-Defendant certified and submitted the false timecards to Gold Rush with no reasonable grounds to believe they were true and accurate, that Cross-Defendant did so with the intention that Gold Rush rely on the timecard records, and that Gold Rush was subsequently damaged when it indeed compensated Cross-Defendant in justifiable reliance on the falsified time cards. (Cross-Complaint, ¶¶ 48-52.)

Civil Harassment

Cross-Complainants cite to Code of Civil Procedure Section 527.6(b)(3), which defines civil harassment as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." Similarly, Section 527.6(b)(1) defines "course of conduct" as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email." Lastly, Cross-Complainants cite Section 527.6(b)(2) defines "credible threat of violence" as "a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

The Cross-Complaint alleges that Cross-Defendant engaged in civil harassment of Lykins through a course of conduct that included: (1) making veiled threats that the "old him" would have burned down Gold Rush's business; (2) sending profane and hostile text messages to Lykins, including one in which he indicates he was arrested for physical harming another individual; (3) informing Isabella Seal that he planned to visit Mr. Lykins' personal residence and threatened to harm Lykins and his family, such that Ms. Seal called the police to perform a wellness check at Lykins' personal residence; and (4) continued sending harassing messages to Lykins even after this incident with the police and well after his termination from Gold Rush. (Cross-Complaint, ¶¶ 56-60.) Furthermore, Cross-Complainants allege that Cross-Defendant's conduct has resulted in credible threats of violence against Lykins, his family, and his business, and that such willful course of conduct sought to alarm, annoy or harass Lykins. (Cross-Complaint, ¶¶ 63-64.)

Leave to Amend

Cross-Complainants argue that leave to amend is proper where a pleading is defective but amendable, and the burden of proving that there is a reasonable possibility that the defect can be cured by amendment is on the party whose pleading is attacked. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1011.; *Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225-225; *Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1132.) The Cross-Complaint was filed December 1, 2023. Cross-Complainants spoke with counsel for Cross-Defendant on numerous occasions and worked with him to allow time to file a verified answer. Counsel for Cross-Defendant has been unable to file a verified answer until June 21, 2024, and has not provided Cross-Complainant with an explanation as to their delay to file a verified answer.

Cross-Defendant argue that the filing of the verified Answer remedies any prior procedural defects and there has been substantial compliance with procedural requirements, and that any delay in verification has been rectified and justified. Cross-Defendant relies on *Cloud v. Northrop*, in arguing that minor procedural defects should not be a basis for dismissing a pleading if the essential purposes of the procedural requirements are met. *Cloud* at 1011.

Cross-Complainants reply that Cross-Defendant failed to seek leave of court to amend the deficient, unverified Answer that was filed on or about February 2, 2024. Cross-Defendant did not seek leave of court to file an Amended Answer.

As cited in Cross-Defendant's opposition, "Liberality in permitting amendment is the rule if a fair opportunity to correct any defect has not been given." *McDonald v. Super. Ct.* (1986) 180 Cal.App.3d 297. Although Cross-Defendant has had sufficient time and notice to cure the defects with the Answer and despite the fact that the newly filed Verified Answer contains the same blanket general denial and affirmative defenses, the court finds that Cross-Defendant conceivably can cure the defects in their answer through amendment. The court finds that such a determination is consistent with the liberal policy of allowing leave to amend. Leave to amend is granted.

TENTATIVE RULING #5:

CROSS-COMPLAINANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITH LEAVE TO AMEND WITHIN 30 DAYS.

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.

6.	**24CV0539**	**SIEMIETKOWSKI v. MCLEAN**
Demurrer		

This case involves a road accessing certain real property identified as residential parcels within the Apple Country Estates Subdivision situated in the unincorporated Camino area of El Dorado County. Plaintiffs, as joint tenants, hold title to 4220 Barbaras Court. There are numerous defendants, but the Demurrer is brought by Janine Marderian ("Defendant") holds title to 4207 Barbaras Court.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. 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,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

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

The Complaint includes three causes of action: (1) Prescriptive Easement/Quiet Title, (2) Declaratory Relief, and (3) Trespass.

Defendant demurs to the First, Second, and Third causes of action on the following grounds:

1. The First cause of action fails to specify the nature of the prescriptive rights that Plaintiffs are pursuing, fails to state that the ingress/egress rights previously offered to Plaintiffs are different from those being sought in this matter and/or are inadequate to facilitate the sale of Plaintiffs' home, and fails to state that prescriptive parking rights are necessary to facilitate the sale of Plaintiffs' home.
2. The Second cause of action fails to specify the nature of the prescriptive rights that Plaintiffs are pursuing, fails to state that the ingress/egress rights previously offered to Plaintiffs are different from and are insufficient relative to the prescriptive rights sought in this matter, and fails to state that the prescriptive parking rights Plaintiffs are seeking should override or negate the Emergency Access and Pedestrian Easement extended by the McLeans to the residents of Apple Country Estates and CalFire.
3. The Third cause of action fails to specify the date, time, nature and location of Defendant's alleged trespass.

It is noted that Defendants prays that the Demurrer be sustained *with* leave to amend.

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

While not contained in a separate pleading, in her Demurrer Defendant requests judicial notice of Exhibit A, Exhibit C, Exhibit D, Exhibit E, and Exhibit F. The Demurrer does not seem to indicate a request for judicial notice of Exhibit B, which is a recorded deed.

Exhibit A is a letter from the McLeans to Plaintiffs. Exhibit C is an *unrecorded* Easement Grant Deed. Exhibit D appears to be a printout from an El Dorado County website regarding 4220 Barbaras Court. Exhibit E contains flyers for a neighborhood cleanup and various photos. Exhibit F is a screenshot of a text conversation.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. 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)

Defendant's request for judicial notice is denied, due to the documents not falling within Evidence Code §452.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

The Demurrer references a meet and confer on Tuesday, April 9, 2024, which is two days before the Demurrer was filed, but no detail is given regarding that meeting. There is no meet and confer declaration provided, and without further information, it appears that meaningful meet and confer efforts did not occur.

First Cause of Action – Prescriptive Easement/Quiet Title

Defendant argues that Plaintiffs fail to acknowledge that they were offered ingress/egress rights by the McLeans and fail to specify what, if any, additional rights they are seeking under the Complaint. Defendant cites no case law.

To establish the elements of a prescriptive easement, the Plaintiffs must prove use of the property for five years, which has been open and notorious, continuous, and uninterrupted, hostile to the true owner, and under claim of right. *Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032.

Plaintiffs argue there is actual, hostile, open, notorious and continuous, prescriptive use of the emergency vehicular access ("EVA") by Plaintiffs starting in 2002 and vesting in 2007. Plaintiffs respond with citations to facts included in their Complaint. (Complaint, ¶88)

Second Cause of Action – Declaratory Relief

Defendant argues that the Complaint does not specify the definition or nature of the "prescriptive rights" sought by Plaintiffs, and whether the cause of action is limited to pursuit of prescriptive parking rights.

Plaintiffs respond that the McLean Easement does not recognize the vested prescriptive rights of Plaintiffs over the EVA (as pled in the first cause of action) and that judicial declarations are necessary to establish the rights and obligations of all parties in the EVA. As Plaintiffs argue, declaratory relief requires an actual controversy. In this case, if the Court finds Plaintiffs possess a prescriptive easement and grant quiet title, then declaratory relief is necessary. Again, Plaintiffs cite to facts pled in the Complaint. (Complaint, ¶¶88, 90-91, 56, 81-82)

Third Cause of Action – Trespass

Defendant argues that some of Plaintiffs' allegations of trespass occurred on Plaintiffs' property and some occurred on the "McLeans' gravel road", and that the cause of action fails to specify the date, time, nature or location of Defendant's trespass.

Plaintiff provides: "the intent required as a basis for liability as a trespasser is simply an intent to be at the place on the land where the trespass allegedly occurred…The defendant is liable for an intentional entry although he has acted in good faith, under the mistaken belief, however, reasonable, that he is committing no wrong." *Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480-1481. Plaintiff cites to several facts in the Complaint. (Complaint, ¶¶93-94, 83-86)

As cited above, when a demurrer is brought "[t]he complaint must be construed liberally by drawing reasonable inferences from the facts pleaded." *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679. Defendant fails to cite any authority that supports her arguments. Plaintiff cites to facts in the Complaint, which may support the three causes of action.

TENTATIVE RULING #6:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS DENIED.**
2. **DEFENDANT'S DEMURRER IS OVERRULED.**

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

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