1.	24CV1168	MATTER OF GREENBERG
Compromise of Minor Claim		

On June 10, 2024, Gail Greenberg, the grandmother of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on June 10, 2024.

This is a Petition to compromise a minor's claim. The Petition states the minor sustained back and hand injuries resulting from a bounce house incident in 2022. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $40,000.

The Petition states the minor incurred $13,943.96 in medical expenses, less $6,443.96 negotiated/contractual/statutory reductions. There is a lien in the amount of $13,943.96 and the lienholders have agreed to accept $7,500.00. 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 $10,000.00, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c) as Attachment 13a.

The minor's attorney also requests reimbursement for costs in the amount of $530.74. 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 $21,969.26 due to the minor, the Petition requests that they be invested in a single-premium deferred annuity, subject to withdrawal only on authorization of the court. See attachment 18(b)(3), which includes the name and address of the annuity, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

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. The documents specified above also need to be filed and received by the Court prior to approval of the Petition.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 16, 2024, AT 8:30 AM 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.	**23CV2111**	**HENDRICKS v. FREER**
Demurrer		

This case involves a home owned by Jennifer Hendricks and Gaild Holdbrook ("Plaintiffs") and Jerilyn Freer ("Defendant"). The parties owned the property as joint tenants. According to the First Amended Complaint ("FAC"), the parties split the carrying cost of the property three ways, but Plaintiff Hendricks never resided at the property. (FAC, p. 3) The FAC further alleges that Defendant Freer has collected rent but never paid for her use of the property, nor distributed any portion of the rental proceeds to Plaintiffs. (FAC, p. 3)

Plaintiff Holdbrook and Defendant formed a partnership to run a childcare business out of the home and agreed to split the profits and losses of the business. (FAC, p. 3) The partnership ended in 2020. (FAC, p. 3)

The parties unsuccessfully tried to sell the property. Around fall 2021, the parties orally agreed to prepare and list the property by May 2022, and since Defendant was residing in the property, she agreed to prepare the property. (FAC, p. 4) The property was not listed until August 2022. (FAC, p. 4) The listing price started at $999,000, reduced to $820,000, and later relisted at $899,000. (FAC, p. 4) Offers were received throughout the months for $835,000 (potentially $850,000), $800,000, and $750,000, but allegedly Defendant failed to cooperate with negotiations. (FAC, p. 4)

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 four causes of action: (1) Partition; (2) Breach of Contract; (3) Breach of Fiduciary Duty; and (4) Accounting. Defendant demurs to the Second, Third, and Fourth causes of action on the grounds that each fails to state facts sufficient to constitute a cause of action as a matter of law under Code of Civil Procedure §430.10(e).

Requests for Judicial Notice

There is no request for judicial notice.

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 Court finds that both counsel in this case could have engaged in more meaningful discussions. Further, the Court agrees with Plaintiffs' counsel that availability by phone was offered and counsel for Defendant refused to comply. However, pursuant to CCP §430.41(a)(4), despite a finding that the meet and confer process was insufficient, the demurrer must be addressed.

Breach of Contract

In the FAC, Plaintiffs state that they upheld their end of the oral contract by engaging a real estate agent to list the property and being ready to accept offers on the property, but that Defendant failed to have the property ready to list by May 2022 and instead it was ready in August 2022. (FAC, p. 5) In establishing a breach of contract claim, a plaintiff must prove: (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) resulting damages to the plaintiff. CACI No. 303; *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.

Defendant claims that the pleaded oral contract is unenforceable. First, Defendant claims that the claim is barred by the statute of frauds because it is based on an oral agreement to

employ an agent to sell real estate. Defendant cites Civil Code §1624(a)(4) and *Westside Estate Agency, Inc. v. Randall* (2016) 6 Cal.App.5th 317, 325-327. The Court agrees with Plaintiffs that Defendant's argument regarding Civil Code §1624(a)(4) is unpersuasive and misplaced. Further, *Westside Estate* is irrelevant, as it concerns commissions between a buyer and a real estate agent, which is different than the facts at issue.

Second, Defendant claims it is an "agreement to agree" which is unenforceable if an essential element (in this case: compensation to listing agent, term of listing agreement, identity of listing agent, listing price) is reserved for future agreement. The Court disagrees with Defendant's argument. If Defendant agreed to "prepare the property" for listing by a certain date, that is an agreement and not merely an agreement to agree.

Third, Defendant claims that Plaintiffs have failed to plead legally cognizable damages because a future market forecast is a prediction or speculation and not a fact. Defendant cites *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1470. That case is distinguishable because it involves misrepresentations by the lender. Defendant argues that Plaintiffs failed to allege a sufficient nexus between Defendant's failure to prepare the property on time and Plaintiffs' alleged economic harm, citing *Bank of America Corp. v. Superior Court* (2011) 198 Cal.App.4th 862, 873. This case is also distinguishable because it involves fraudulent concealment by the lender.

The Court interprets the situation differently than Defendant. The property received multiple offers, each of which was lower than the previous. Not only was the property not ready at the agreed upon time, but there is no evidence that Defendant did try to participate in negotiations for the offers that were in fact received. While the market may have played a part in the reduced value, that is not the issue before the Court at the demurrer stage.

<u>The Demurrer as to the Second Cause of Action is overruled.</u>

<u>Breach of Fiduciary Duty</u>

In the FAC, Plaintiffs allege that the parties, as co-tenants, owed each other fiduciary duties, and that Defendant breached those duties by collecting rent from third parties without paying for her own use of the property or by sharing the rental proceeds with Plaintiffs. (FAC, p. 6)

Defendant argues that a breach of fiduciary duty requires: (1) the existence of a fiduciary duty; (2) breach of fiduciary duty; and (3) damages proximately caused by the breach. *Guitierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932. It does not seem disputed that co-tenants owe each other a fiduciary duty.

Defendant cites cases for the proposition that: "[a]bsent an ouster a cotenant out of possession has no right to recover the rental value of the property from a cotenant in

possession." *Estate of Hughes* (1992) 5 Cal.App.4th 1607, 1611; *Teixeira v. Verissimo* (1966) 239 Cal.App.2d 147, 155; see *Atlantic Oil Co. v. Los Angeles County* (1968) 69 Cal.2d 585, 602.

In *Estate of Hughes*, the wife died and the husband was asserting sole ownership of the property at issue. The court found an ouster occurred and that ouster triggered an obligation for husband to pay rent to the ousted co-tenants for his use of the property. *Hughes* does not involve one co-tenant collecting rent from third parties, and therefore making a profit on their use of the property. While the Court agrees there has been no evidence of an ouster by Defendant, co-tenants share in the profits (and losses) of a property, and collecting third-party rent is included in that.

The Demurrer as to the Third Cause of Action is overruled.

Accounting

Defendant attacks the fourth cause of action by arguing that an accounting is merely a remedy and not a cause of action. *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 180. The Court agrees with Plaintiffs that *Teselle*, which is controlling, does in fact find that an accounting is a cause of action.

The Demurrer as to the Fourth Cause of Action is overruled.

TENTATIVE RULING #2:

DEFENDANT'S DEMURRER IS OVERRULED IN FULL.

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.	22CV0636	LUCIA v. SUMMITVIEW CHILD & FAMILY SERVICES
Final Approval Hearing		

SEE RELATED CASE NO. PC20210500 (#6)

This case was consolidated with PC20210500 Tyson v. Summitview Child & Family Services (no. 6 on calendar). The motion and supporting documents were filed under that case number.

TENTATIVE RULING #3:

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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4.	22CV0690	MALAKHOV v. MARTINEZ
Objection to Defendant's Request		

Also set as #18 for Motion to Compel

At the hearing on April 26, 2024, Defendant Machado was awarded attorney's fees and costs incurred in bringing the October 13, 2023, Motion for Summary Judgment ("MSJ") in an amount subject to proof. Defendant was required to file and serve a declaration by May 10, 2024, regarding fees incurred, and Plaintiff was given until May 24, 2024, to respond.

Defense counsel ("Defendant") submitted a declaration stating that $12,528.28 in attorney's fees and costs were incurred in preparing the MSJ. The fees and costs include fees and costs related to preparing the motion, reviewing Plaintiff's opposition, preparing the reply brief, preparing for the hearing and attending the hearing. The declaration includes a billing statement which includes entries by the two attorneys and filing costs.

Plaintiff's counsel ("Plaintiff") filed a response disputing the reasonableness of defense counsel's 49.80 hours for preparing the MSJ.

Code of Civil Procedure ("CCP") § 128.S(a), in relevant part, provides: "Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay …." "[T]rial courts have a duty to determine whether a cost is reasonable in need and amount." *Ross v. Superior Court* (1977) 9 Cal. 3d 899, 913; *Thon v. Thompson* (1994) 29 Cal. App. 4th 1546, 1548-1549. There are a number of ways that a Court can make a determination as to whether or not requested fees are reasonable, however, "[r]easonable compensation does not include compensation for 'padding' in the form of inefficient or duplicative efforts" (*Donahue v. Donahue* (2010) 182 Cal. App. 4th 259, 271, citing *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1131-1132)).

Plaintiff argues that Defendant spent over 16 hours on preparing the Memorandum of Points and Authorities alone (10 pages), and two hours on the supporting declarations. Attorney Ta's declaration, dated October 6, 2023, has one sentence in addition to standard canned language, and his October 13, 2023, declaration has two sentences in addition to the canned language. Defendant's reply brief was essentially 4 pages, when the caption and opening language is ignored. As far as the Court can tell, counsel billed at least 10 hours to prepare the reply pleadings.

Plaintiff points out, and the Court agrees, that the redaction of numerous entries makes the overall fee request difficult to assess. The Court finds that while the hourly rates charged appear reasonable ($225 per hour), and the costs seem justified, the overall hours billed appear extremely inflated. The Court awards $603.27 in costs. Upon its review of the pleadings, the

court finds that 18 hours were reasonably expended in connection with the MSJ. As such, the court orders Plaintiff to pay $4,050 in fees (18 hours times $225 per hour). The fees and costs are ordered to be paid by September 12, 2024.

TENTATIVE RULING #4:

1. **PLAINTIFF IS ORDERED TO PAY $603.27 IN COSTS BEFORE SEPTEMBER 12, 2024.**
2. **PLAINTIFF IS ORDERED TO PAY $4,050 IN ATTORNEYS' FEES BEFORE SEPTEMBER 12, 2024.**

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

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5.	22CV0411	SANDOVAL v. REED
Motion for Leave & Motion for Extension		

In April 2018, Mr. and Mrs. Reed ("Lessor") entered into an agreement ("Agreement") with Plaintiff Juan Sandoval ("Plaintiff") to lease the subject property to Plaintiff and Kaylee Reynolds ("Lessee"). The Agreement included an option to purchase the property, if Lessee met all obligations as stated in the Agreement along with six additional terms and conditions that were listed. A dispute has arisen between the parties as to the rights and obligations of the Agreement and what property rights, if any, the parties may have to the subject property.

Plaintiff filed a complaint for breach of contract. No defendants initially answered, and defaults were entered. The defaults were later set-aside. The previously scheduled MSC and trial dates were vacated. No discovery has been requested or propounded by any party. Defendant Mr. Reed ("Defendant") substituted new counsel in at the time of filing these Motions.

Defendant files a Motion for Leave to File Cross-Complaint on the grounds that the proposed cross-complaint arises out of the same transaction or occurrence as does the complaint and is a related cause of action, per Code of Civil Procedure §426.50, but was not pleaded earlier as the result of inadvertence. Defendant argues that allowing such filing is in the interests of justice and will promote the efficient resolution of all claims between the parties.

Code of Civil Procedure §426.50 provides that:

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

Defendant argues that the statute should be liberally construed in a manner to avoid forfeiture of causes of action. Prior defense counsel indicated in their Answer that a cross-complaint was to be filed, but inadvertently was not done. No discovery has occurred, and Defendant did not intend to delay the main case. Motion for Leave is granted.

Defendant also brings a motion pursuant to Code of Civil Procedure §2024.050 on the grounds that the court has authority to reopen discovery after a new trial date has been set, good cause exists to extend the time to complete discovery/reopen discovery, and the facts and circumstances demonstrate that reopening discovery is appropriate. The initial trial date was

vacated, the Court granted a six-month continuance, and the trial was reset for January 21, 2025. No discovery has occurred, and reopening discovery will not affect the current trial date.

Plaintiff does not object to reopening discovery for all parties for the period up to 30 days prior to trial. However, Plaintiff requests that the court order that all defendants consolidate their discovery demands on Plaintiff in a single set of requests and single deposition.

Defendant responds, arguing that to require all defendants to consolidate their discovery requests into one set is improper and unnecessary. A party is entitled to disclosure in discovery as "a matter of right unless statutory or public policy considerations clearly prohibit it." (*Greyhound Corp. v. Superior Court* (1961) 56 C2d 355, 378.) Defendant states that Plaintiff has provided no evidence of a statutory or public policy reason why the Court should issue an order against the rights of all the defendants in this case; Defendant further argues that nor has Plaintiff provided evidence that such an order would uphold the twin legislative purposes of discovery: avoiding unfair surprise and preventing fabrication. (*Glenfeld Dev. Corp. v. Superior Court* (1997) 53 CA4th 1113, 1119.) Under the Rules of Professional Conduct, attorneys are already prohibited from "[using] means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense." (Cal. Rules of Prof. Conduct, rule 3.2.)

The Court recognizes Plaintiff's discovery concerns and expects that all defendants will work together so as not to unnecessarily duplicate requests of Plaintiff. <u>Motion to Extend/Reopen Discovery is granted.</u>

TENTATIVE RULING #5:

1. **MOTION FOR LEAVE TO FILE CROSS-COMPLAINT IS GRANTED.**
2. **MOTION TO EXTEND/REOPEN DISCOVERY IS GRANTED.**

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6.	PC20210500	TYSON v. SUMMITVIEW CHILD & FAMILY SERVICES
Final Approval Hearing		

This motion for final approval of the settlement of this Private Attorneys General Act ("PAGA") class action lawsuit is unopposed.

At a hearing on April 12, 2024, the court issued an Order Granting Preliminary Approval of a Class Action Settlement. That Order includes the following:

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

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

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

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

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

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

6) Preliminary approval of the definition and disposition of the not-to-exceed Gross Settlement Amount of $300,000, which is inclusive of the payment of attorneys' fees not to exceed

$100,000, costs not to exceed $20,000, a Service Award not to exceed $10,000 to each named Plaintiff, a PAGA Payment of $10,000 (of which 75% or $7,500 will be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% or $2,500 will be paid to Settlement Class Members); Settlement Administration Costs not to exceed $10,000, and payment by Defendant of its share of payroll taxes on the portion of the Individual Settlement Amounts to Participating Class Members that are allocated as wages subject to withholding.

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

8) Instructing the Defendant to work diligently and in good faith to compile from its records and provide the Settlement Administrator with the "Class Data" – as defined in paragraph 6 of the Settlement Agreement – for Settlement Class Members, in a format to be provided by the Settlement Administrator, which will consist of the following information: (1) the Class Members' full names; (2) last known addresses; (3) Social Security Numbers; (4) telephone numbers; and (5) dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member, and ordering the Defendant to provide the "Class Data" as referenced herein to the Settlement Administrator within thirty (30) days after entry of the Preliminary Approval Order.

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

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

    a) Any Class Member who desires to be excluded from the Settlement must timely mail or fax his or her written Request for Exclusion in accordance with the Notice Packet;
    b) Requests for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion.
    c) The Request for Exclusion should state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SUMMITVIEW CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

d) All such persons who properly and timely exclude themselves from the Settlement shall not be Settlement Class Members and shall have no rights with respect to the Settlement, no interest in the Settlement proceeds, and no standing to object to the proposed Settlement.

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

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

12) Providing that

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

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

14) Setting a final approval hearing to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of

attorneys' fees and costs to award to Class Counsel; and (3) the amount of service award to the Class Representative.

On July 9, 2024, Plaintiffs filed an unopposed motion for final approval of the class and PAGA action settlement. The Declaration of Cassandra Polites ("Polites Declaration"), on behalf of ILYM Group, Inc., which served as the court-appointed Class Action Settlement Administrator for the case, dated June 25, 2024, contains a copy of the proposed settlement agreement attached as Exhibit A.

The Polites Declaration states that 585 individuals were includes as Class Members in the action. The Notice of Class and Representative Action was successfully mailed to all but 25 class members, for whom no address could be ascertained despite diligent investigation. Polites Declaration, ¶¶ 7-10. No requests for exclusion or notices of objection were received from the class members. Polites Declaration, ¶¶ 11-12. One work week dispute was received from a class member and that challenge was resolved. Polites Declaration, ¶ 13.

After deductions from the gross settlement amount of $300,000.00 (attorney's fees in the amount of $100,000.00; costs in the amount of $20,000.00; the requested Class Representative's Service Payments $20,000.00, the requested Administration Expenses Payment $10,000.00, the Labor Workforce Development Agency Payment $7,500.00, and the PAGA Penalties allocation to Aggrieved Employees $2,500.00, a net settlement amount of $140,000.00 remains to pay settlement class members. Polites Declaration, ¶ 14.

The highest individual settlement to be paid to a participating class member is $1,238.76; the lowest individual settlement to be paid to a participating class member is $4.06, while the average individual settlement to be paid to participating class members is $239.32. Polites Declaration, ¶ 16. Pursuant to the agreement, 25% of the PAGA Penalties payment ($2,500) will be allocated to Aggrieved Employees regardless of whether they opted out of the Class Settlement. The Employee PAGA Amount is allocated on a pro rata basis using their PAGA Pay Periods. There are 284 Aggrieved Employees who worked 6,265 pay periods during the PAGA period. Polites Declaration, ¶ 17. The highest individual settlement to be paid to an Aggrieved Employee is $23.94; the lowest individual settlement to be paid to a an Aggrieved Employee is $0.40, while the average individual settlement to be paid to an Aggrieved Employee is $8.80. Polites Declaration, ¶ 18.

No declaration was submitted by the named Plaintiff.

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

(a) Court approval after hearing

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

(b) Attorney's fees

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

(c) Preliminary approval of settlement

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

(d) Order certifying provisional settlement class.

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

(e) Order for final approval hearing

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

(f) Notice to class of final approval hearing

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

(g) Conduct of final approval hearing

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

(h) Judgment

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

It appears that the requirements for court approval pursuant to California Rules of Court, Rule 3.3769 have been satisfied by the documents on file with the court. However, Rule

3.3769(e) requires the court to conduct an inquiry into the fairness of the proposed settlement and allow for any class members to express any objection during the final approval hearing. Accordingly, the parties are required to appear.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 16, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

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

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

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.	PC20200378	MITCHELL v. NEJATIAN
Motion to be Relieved		

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

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

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the client at their last known address and on counsel for opposing party was filed on June 17, 2024.

No hearing dates are currently scheduled for the case. The final judgment after jury trial scheduled to be entered on August 9, 2024.

TENTATIVE RULING #7:

ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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

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8.	22CV0495	AYALA v. CALIFORNIA SUITES
Compliance Hearing		

Settlement agreement was approved on February 10, 2023.

TENTATIVE RULING #8:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 16, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

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

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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.	23CV0744	FAGAN v. HOWARD
Motion for Terminating and Monetary Sanctions Against Plaintiffs		

On March 8, 2024, the Court granted Defendant's Motions to Deem Matter Admitted and Motion to Compel and ordered each Plaintiff to pay $903.75 in sanctions to Defendant, payable by April 8, 2024. According to Defendant, Plaintiffs failed to comply with the Order.

Defendant now brings this Motion requesting that the Court issue terminating sanctions that would dismiss this case with prejudice, or alternatively requesting the Court impose issue and/or evidence sanctions as the Court deems appropriate in its discretion. If the Court is not inclined to order issue or evidentiary sanctions, Defendant requests a complete stay of this case until Plaintiffs can demonstrate full compliance with the Court's prior orders that he can properly respond to the discovery requests made and has paid all monetary sanctions in full.

When Defendant filed his Answer, Plaintiffs were both propounded with discovery requests in August 2023 (Form Interrogatories, Set One; Requests for Production of Documents, Set One; Request for Admissions, Set One). (Moenig Dec., ¶¶2-3) Defendant states that Plaintiffs failed to provide any response, which resulted in the Motion to have Admissions Deemed Admitted and Motion to Compel, which the Court granted on March 8, 2024. Plaintiff's responses were due by April 8, 2024, pursuant to the Order. Plaintiffs did not request oral argument prior to the hearing.

According to counsel, Defendant served Plaintiffs with correspondence providing further notice of the Court's order. (Moenig Dec., ¶ 8) Defendant states that Plaintiffs failed to comply and failed to communicate a response. (Moenig Dec., ¶ 9) Defendant as incurred $1,570.50 in bringing the current Motion. (Moenig Dec. ¶ 10)

<u>Code of Civil Procedure section 2030.300(e) pertaining to written interrogatories states as follows:</u>

> If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

<u>Code of Civil Procedure section 2031.300(c) pertaining to inspection and production of documents states, in part:</u>

> ...If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary

> sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)

Code of Civil Procedure § 2023.030(d)(3) allows the court to impose a terminating sanction by way of "an order dismissing the action or any part of the action of that party," and section 2023.030(d)(4) allows the court to impose an order "rendering a judgment by default" against the abusive party. Section 2023.030(a) also allows the court to impose monetary sanctions against Plaintiffs as a result of conduct involving a willful refusal to comply with a court order without substantial justification. Misuses of the discovery process include, but are not limited to: "(d) Failing to respond or to submit to an authorized method of discovery," and "(g) Disobeying a court order to provide discovery." Code Civ. Proc. § 2023.010.

In addition to the authority provided by Code of Civil Procedure section 2023.030(d)(4) for a terminating sanction against Plaintiffs in this case, Code of Civil Procedure sections 2031.300(c), 2031.310(i) and 2031.320(c) all authorize monetary sanctions in addition to terminating sanctions. Code Civ. Proc. § 177.5, also authorizes a court to award monetary sanctions for violation of a court order. The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious, or whimsical action.

Defendant claims that only two facts are an absolute prerequisite to imposition of a discovery sanction: (1) there must be a failure to comply, and (2) the failure must be willful. *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496. However, that case is different than the instant case, because there, the plaintiffs incorporated forged documents into the pleadings, refused to allow completion of plaintiff's deposition, and destroyed evidence of the forgery.

While terminating sanctions are generally an extreme form of sanctions, they are warranted in cases in which a party has repeatedly misused the process, including the meet and confer process, and failed to comply with the Court's prior orders. *Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1619-1622. This case is more similar to the instant case – the discovery requests were served at separate times, and defendant failed to respond each time. Defendant also cites to *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1183, which also involves repeated failures to comply with discovery requests and orders.

In *Parker v. Wolters Kluwer U.S., Inc.* (2007) 149 Cal. App. 4th 285, the plaintiff failed to properly respond to discovery, failed to submit to deposition, and monetary sanctions did not result in compliance, the court struck plaintiff's complaint. In the instant case, Plaintiffs have failed to respond to discovery requests, failed to comply with the Court order, and failed to pay the monetary sanctions.

Pursuant to counsel's declaration, Plaintiffs have failed to further communicate at all about the Court's prior order. The Court is satisfied with Defendant's efforts to inform and

communicate with Plaintiffs and provide them additional notice of the Court's orders. Plaintiffs did not oppose the prior Motions, object to the prior tentative ruling, communicate with Defendant, nor did they respond to the present Motion.

TENTATIVE RULING #9:

1. **THE COURT ISSUES TERMINATING SANCTIONS, DISMISSING THIS CASE WITHOUT PREJUDICE.**
2. **EACH PLAINTIFF IS ORDERED TO PAY MONETARY SANCTIONS OF $1,689.00 BY SEPTEMBER 20, 2024, WHICH INCLUDES THE COURT'S PRIOR ORDERS FOR SANCTIONS.**

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.	PC20200482	TUNDAVIA v. DASGUPTA, BANK OF AMERICA
Motion to Compel		

Motion for Order to Compel Ria Dasgupta to Appear for Her Deposition, to Produce Documents, and for Sanctions Against Ria Dasgupta

"If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Civ. Proc. § 2025.450(a).)

The Court recognizes the efforts undertaken by Plaintiff to schedule Dasgupta's original deposition and now her continued deposition, and that a court order is necessary to obtain her cooperation.

"The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Civ. Proc. § 2025.450(b).

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Civ. Proc. § 2025.450(g).) "Trial court should select a sanction for party's refusal to obey discovery order that is tailored to the harm caused by the withheld discovery." (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604.) "If a lesser discovery sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse." (*Creed-21 v. City of Wildomar* (2017) 18 Cal. App. 5th 690, 701-702.

According to the Motion and accompanying declarations, Plaintiff has been attempting to schedule/complete Dasgupta's deposition for two years. The Motion notes how Dasgupta has failed to cooperate in a separate civil case between the parties, where sanctions in the amount of $2,000 were not enough to encourage Dasgupta's participation in the discovery process. Plaintiff requests sanctions in the amount of $25,000.00. There has been no response by Dasgupta or her attorney.

TENTATIVE RULING #10:

1. **DASGUPTA IS ORDERED TO ATTEND HER DEPOSITION WITHIN 45 DAYS OF THIS ORDER. IF PARTIES CANNOT AGREE ON A DATE, THE COURT HEREBY SELECTS MONDAY, SEPTEMBER 16, 2024, AT 9:00 A.M. AT A REASONABLE LOCATION SELECTED BY PLAINTIFF.**
2. **DASGUPTA IS ORDERED TO PRODUCE THE DOCUMENTS REQUESTED IN THE NOTICE OF DEPOSITION TO PLAINTIFF BEFORE 5:00 PM ON FRIDAY, AUGUST 23, 2024.**
3. **THE MATTER IS SET FOR AN ORDER TO SHOW CAUSE HEARING REGARDING THE REQUESTED SANCTIONS ON OCTOBER 25, 2024 AT 8:30 A.M. IN DEPARTMENT 9, WHEN THE PARTIES ARE SET TO BE IN COURT FOR ANOTHER ISSUE. PARTIES ARE ORDERED TO FILE A DECLARATION REGARDING THE STATUS OF COMPLIANCE BY OCTOBER 11, 2024.**

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

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11.	22CV0884	SANCHEZ v. GENERAL MOTORS
Motion to Compel Deposition of PMQ		

Plaintiff brings this Motion to Compel the Deposition of Defendant's Person Most Qualified ("PMQ") pursuant to Code of Civil Procedure §§ 2025.450 and 2025.480, on the grounds that Defendant has not sufficiently responded to any of Plaintiff's meet and confer efforts in attempting to schedule a deposition of Defendant's PMQ. Plaintiff seeks testimony and documents directly relevant to his claims under the Song-Beverly Consumer Warranty Act. Plaintiff requests an order compelling Defendant to produce a PMQ for all categories enumerated in the Notice of Deposition within 10 calendar days of the order.

On August 19, 2022, Plaintiff served Plaintiff's Notice of Deposition ("NOD") of PMQ for General Motors and a Demand to Produce Documents at Deposition. On August 26, 2022, Defendant objected to the NOD but stated a willingness to appear for a deposition, on some of the requested categories, on a mutually agreeable date. On May 9, 2023, and June 23, 2023, Plaintiff requested that Defendant provide possible dates, but received no response.

On July 20, 2023, Plaintiff served Defendant with an Amended NOD ("ANOD") and on August 1, 2023, Defendant objected and replied in the same manner as before. On October 24, 2023, Plaintiff followed up and requested dates. On October 25, 2023, Defendant stated the scope of the deposition had not been agreed upon. Plaintiff further followed up with Defendant, to no avail, on 11 instances between October 25, 2023, and December 28, 2023.

Plaintiff served a Second Amended NOD ("SANOD") on January 18, 2024. Defendant objected and replied in the same manner as before. The parties continued to go back and forth, but by February 15, 2024, the parties had agreed-upon categories and Plaintiff asked Defendant for deposition dates. Plaintiff states that Defendant has still refused to provide Plaintiff with deposition dates.

"The service of a deposition notice…is effective to require any deponent who is a party to the action…to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying." Cal. Civ. Proc. Code § 2025.280(a). The deposition of a non-natural person (e.g. corporation) may be noticed by describing "with reasonable particularity the matters on which examination is requested" and the deponent "shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf." Cal. Civ. Proc. Code § 2025.230.

If, after service of a deposition notice, a party (or a witness designated on behalf of such party) fails to appear for deposition, fails to appear for examination, to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, without having served a valid objection under Code Civ. Proc. § 2025.410, the party giving the

notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. Cal. Civ. Proc. Code § 2025.450(a); see *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 973-974 (manufacturer in Song-Beverly Act lawsuit ordered to produce a person most qualified and documents concerning the complaints of other customers regarding the same defect in vehicles of the same year, make, and model as plaintiff's vehicle).

Defendant replies, arguing that Plaintiff has already served 61 Requests for Production, 25 Special Interrogatories, 23 Requests for Admission, 25 Form Interrogatories, and 35 Requests for Production in his deposition notice for GM's PMQ demanding that GM produce a PMQ on 20 different topics. Defendant states that it offered a PMQ deposition on categories 1-4, 7, 10 and 20, which it argues are those actually pertinent to Plaintiff's vehicle.

Plaintiff responds that for purposes of Civ. Proc. Code § 2017.010, the discovery Plaintiff seeks is highly relevant to the subject matter of this case: Defendant's ability (or inability) to repair defects in Plaintiff's vehicle. Plaintiff has certainly fulfilled his meet and confer efforts.

Some of the disputed categories involve Defendant's internal investigations concerning a defect, evidence of Defendant's awareness of such defects (through customer complaints and field reports), evidence of Defendant's ability (or inability) to repair a defect, and evidence of Defendant's awareness of unsuccessful repairs for a particular defect. Moreover, evidence of the same defects in other vehicles manufactured with the same defective systems, and Defendant's internal investigations and communications regarding the repairs for these particular defects, are entirely admissible and, therefore, discoverable. *See, Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 154 (holding expert testimony of the same failures in other vehicles is not "unduly prejudicial" since testimony focused on same transmission as installed on Plaintiff's vehicle and everything which expert "testified that applied to other vehicles applied equally to Plaintiff's vehicle."); *Doppes v. Bentley Motors, Inc.,* (2009) 174 Cal.App.4th 976, 973-76.

In response to Defendant's argument that Plaintiff's request are overbroad, Plaintiff states that the requests are limited in scope to vehicles of the same year, make and model of Plaintiff's vehicle.

Plaintiff argues he is entitled to testimony on Defendant's policies and procedures. Under the Song-Beverly Act, if Plaintiff establishes Defendant has willfully failed to comply with any obligations under the act, then Plaintiff is entitled to civil penalty damages. Civ. Code § 1794(c); *Oregel v. American Isuzu Motors, Inc*. (2001) 90 Cal.App.4th at 1104. Accordingly, Plaintiff argues he is entitled to discovery relating to Defendant's policies, procedures, and practices regarding vehicle repurchases. *See, Id.* at 1105 (evidence that Defendant has "adopted internal policies that erected hidden obstacles to the ability of an unwary consumer to obtain redress under the Act" may support a finding of willfulness to support a civil penalty).

Defendant claims that the deposition categories sought by Plaintiff "invites" the production of confidential and trade secret information. As an initial matter, Plaintiff argues that objections based on confidentiality are not proper grounds for withholding responsive information*. See, Columbia Broadcasting System, Inc. v. Superior Court* (1968) 263 Cal.App.2d 12, 23 ("We know of no case holding that this is a proper objection to an otherwise proper interrogatory."). The answering party should move for a protective order and an objection is not the equivalent of such a motion. *Id.* In this case, the parties have already stipulated to a protective order, so Defendant's argument is irrelevant.

Under the Civil Discovery Act, the court shall impose sanctions against a party who unsuccessfully opposes a motion to compel a declaration, unless imposition of the sanctions would be unjust or the party acted with substantial justification. The court cannot finds that any of the exceptions apply to the mandatory sanctions provision. Therefore, the court imposes a sanction of $500 against Defendant for its unsuccessful opposition to the motion, payable by August 30, 2024.

TENTATIVE RULING #11:

PLAINTIFF'S MOTION IS GRANTED. DEFENDANT IS ORDERED TO PAY PLAINTIFF $500 IN SANCTIONS BY AUGUST 30, 2024.

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

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.

12.	**24CV0223**	**SITEONE LANDSCAPE SUPPLY v. JVM LANDSCAPE CONSTRUCTION**
Motion to Set-Aside		

The Complaint alleged breach of contract, account stated, and book account. Default was entered on April 25, 2024 and Default Judgment was entered on April 30, 2024 in favor of Plaintiff against Defendant. The judgment was for $22,713.28, including $14,641.02 in damages, $5,342.80 in prejudgment interest, $2,000 in attorney fees, and $729.46 in costs.

Defendant moves the court to set aside the default, vacate the default judgment, permit Defendant to file an Answer, and appear at a trial. The Motion was filed June 7, 2024. Defendant argues that she was mistaken as to some material fact or law relating to Defendant's duty to respond, through inadvertence and/or oversight failed to timely respond, and Defendant was prevented from responding due to an unexpected condition or situation which arose, without any default or negligence on their part, and which ordinary care could not have prevented. Defendant states she was working on filing for bankruptcy and believed that bankruptcy filing would allow for more time in responding to this matter. Defendant filed a general denial on June 7, 2024.

[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].)

<u>Elston v. City of Turlock</u>, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

California Code, Code of Civil Procedure - CCP § 473

(b) 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. . . . . No affidavit or declaration of merits shall be required of the moving party…

(c)(1) Whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

> (A) Impose a penalty of no greater than one thousand dollars ($1,000) upon an offending attorney or party.
>
> (B) Direct that an offending attorney pay an amount no greater than one thousand dollars ($1,000) to the State Bar Client Security Fund.
>
> (C) Grant other relief as is appropriate.

* * *

The Motion to Set Aside was filed within 6 months of the entry of Judgment but was not accompanied by a proof of service. To allow the matter to be resolved on its merits, the court continued the matter. Defendant was directed to serve the motion, the answer, and any other filed pleadings Defendant wishes the court to consider on Plaintiff by no later than 16 court days in advance of the hearing (plus five calendar days if service is by mail). Service must be confirmed by a filed proof of service. The court confirms that the motion to set aside the default only applies to the individual defendant and not the corporate entity. Defendant served Plaintiff on June 24, 2024, and the proof of service was filed on July 5, 2024. Defendant did not file a separate motion on behalf of the corporate entity.

Plaintiff opposes the Motion on the grounds that Defendant did not attempt to reach out to Plaintiff, nor inform Plaintiff of her intention to file bankruptcy, but rather that Defendant ignored the proceedings until the judgment was entered. If the Court grants the Motion to Set-Aside, Plaintiff requests fees and costs pursuant to Code of Civil Procedure §473(c)(1) subsections (A) and (C), which provide that "whenever the court grants relief from a default, default judgment, or dismissal, based on any of the provisions of [C.C.P. $ 473], the court may... (A) impose a penalty of no greater than one thousand dollars ($ 1,000.00) upon an offending attorney or party" or "[g]rant other relief as is appropriate." C.C.P §§ 473(c)(1)(A) and 473(c)(1)(C). Plaintiff requests attorneys' fees in the amount of $2,925.00 for the time spent preparing the paperwork to obtain the judgment, including preparing the declaration, memorandum of points and authorities, and initiating post-judgment collections, along with drafting oppositions to both of Plaintiff's Motions. The court exercises its discretion under C.C.P. 473 to impose a penalty against Defendant of $500, which the court finds to be just under the circumstances.

TENTATIVE RULING #12:

1. **DEFENDANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT IS GRANTED.**
2. **PLAINTIFF IS AWARDED FEES AND COSTS IN THE AMOUNT OF $500.00.**

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).

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

13.	24CV0886	STEARNS BANK v. CAMEO RCFE
MOTION FOR APPOINTMENT OF RECEIVER		

Plaintiff makes this Motion pursuant to California Code of Civil Procedure, §§ 564(b)(2) (action for judicial foreclosure); 564(b)(9) (where necessary to preserve property and rights); and 564(b)(11) (to enforce assignment of rents provision).

Plaintiff ("Bank" or "Plaintiff") made two loans to Defendant ("Borrower" or "Defendant"), secured by property located at 2551 Cameo Drive in Cameron Park, which operates as an elder-care facility. The loans were secured by Defendants' Collateral and deeds of trust were filed with the county recorder along with UCC-1 financing statements filed with the Secretary of State. Plaintiff states that pursuant to the Deeds of Trust, Borrower agreed that upon default, the Bank may appoint a receiver and collect rents. Plaintiff states that pursuant to the Security Agreements, Borrower agreed that upon default, the Bank may appoint a receiver and collect revenues, apply accounts.

Plaintiff claims Borrowers defaulted under the terms of the Loan Documents by failing to make any principal or interest payments when due under the First Note since January 1, 2024; and failing to make any principal or interest payments when due under the Second Note since January 14, 2024. In addition, Plaintiff claims Borrowers have failed to remit to the Bank late charges, legal fees, and other costs and charges. (Bell Declaration at ¶¶ 28-32). The total amount due and owing to Plaintiff by Defendants on the First Note as of June 20, 2024, is $2,208,141.74, which amount consists of $2,077,657.09 in outstanding principal, $114,754.97 in accrued but unpaid interest, $6,654.60 in late charges and $9,075.08 in other fees and costs. Plaintiff notes that the Indebtedness will continue to accrue interest, late fees, and other charges until the Loan is paid in full. (Bell Declaration at ¶ 33). The total amount due and owing to Plaintiff by Defendants on the Second Note as of June 20, 2024, is $2,354,870.17, which amount consists of $2,225,852.30 in outstanding principal, $113,335.52 in accrued but unpaid interest, $6,082.03 in late charges and $9,600.32 in other fees and costs. (Bell Declaration at ¶ 34). Plaintiff states that the Loan Documents further provide that Defendants will pay all of Plaintiff's expenses of any nature, including but not limited to reasonable attorneys' fees and costs incurred in enforcing their terms. (Bell Declaration at ¶ 35).

Plaintiff argues that Defendants have agreed that in the event of a default, Plaintiff may have the appointment of a receiver. *See, e.g.,* the Commercial Security Agreements, Exhibit 8 at p. 5; Exhibit 9 at p. 5; Exhibit 10 at p. 4; Exhibit 11 at p. 5; First Deed of Trust, Exhibit 5, at p. 6; and Second Deed of Trust, Exhibit 6, at p. 7. The Court agrees that these documents all contain language that states upon Default, Plaintiff has the right to have a receiver appointed. The documents all define a Default to include failure to make any payment when due under the indebtedness.

CCP §564(b)(2) authorizes appointment of a receiver in cases of judicial foreclosure of a mortgage, with the caveat that a receiver may be appointed "…where it appears that the property is in danger of being lost, removed, or materially injured…." However, CCP §564(b)(11) authorizes appointment of a receiver where a secured lender is seeking to enforce an assignment of rents provision, which is the case here.

Borrower opposes the motion, arguing that there is no risk of danger or irreparable injury to the collateral, that the claims are fully secured by more valuable collateral, and that Borrower has tried to resolve the bank's claims. Borrower also argues that the facility operates as a senior living facility, and appointing a receiver will cause significant disruption. Borrower does not address the fact that the Agreements allow for appointment of a receiver upon Default. Borrowers do not deny Defaulting. Plaintiff does not dispute that the value of the property is sufficient to cover the debt.

"A court is permitted to give considerable weight to a contract in which parties have agreed to the conditions under which a receiver may be appointed. For example, while a provision in a deed of trust that upon default the beneficiary shall be entitled to the appointment of a receiver is not binding on the court, such an agreement may be given evidentiary weight, and may present 'a prima facie, but rebuttable, evidentiary showing of the beneficiary's entitlement to appointment of a receiver.'" 12 Cal. Real Est. § 41:4 Standards for appointment (4th ed.) *See also Barclays Bank of California v. Superior Court* (1977) 69 Cal.App.3d 593, 602.

However, "[t]he appointment of a receiver is a drastic remedy, may involve unnecessary expense and hardship and courts carefully weigh the propriety of such appointment in exercising their discretion to appoint a receiver particularly if there is an alternative remedy." (*Hoover* v. *Galbraith*, 7 Cal.3d 519, 528)

While the Court agrees that Plaintiff is entitled to appointment of a receiver, it also sees Defendant's arguments regarding the value of the property and the potential disruption to the care facility. The Court will grant Plaintiff's alternative request for a Limited Purpose Receivership over rents and profits.

TENTATIVE RULING #13:

BELLANN RAILE IS HEREBY APPOINTED AS LIMITED PURPOSE RECEIVER OVER THE BOOKS AND RECORDS OF THE PROPERTY TO COLLECT RENTS AND ACCOUNT TO THE BANK AND THE COURT.

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

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14.	PC20210340	SCHNEIDER v. SCHNEIDER
Motion to Set Aside (as to Nathan Schneider)		

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.

Set-Aside Motions

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 #14:

(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).

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15.	24CV0204	WELLS FARGO v. OBRIEN
Motion to Deem the Truth of the Matters Specified		

On April 2, 2024, Plaintiff propounded discovery consisting of Request for Admissions. Plaintiff claims Defendant's responses were due on or before May 7, 2024, and that Defendant failed to respond.[1] On May 10, 2024, Plaintiff states they sent a meet and confer letter to the Defendant advising that the responses were past due and providing Defendant with an extension. At the time of filing the Motion, Plaintiff claims no responses have been received from Defendant.

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 (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.
>
> ***

[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).

Based on the foregoing, the Court deems the truth of the matters specified in Plaintiff's Request for Admissions as admitted. As sanctions are mandatory under the code, the court imposes sanctions of $100 against Defendant for the costs in filing those motion, payable by September 16, 2024.

TENTATIVE RULING #15:

MOTION IS GRANTED. DEFENDANT IS ORDERED TO PAY PLAINTIFF $100 AS A SANCTION BY SEPTEMBER 16, 2024.

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

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

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

16.	**23CV0395**	**VELLA v. PELA**
Motions to Compel		

Defendant and Cross-Complainant Pela ("Defendant") propounded discovery on Plaintiff and Cross-Defendant Vella ("Plaintiff") on September 19, 2023. Defendant granted an extension of time for response, after which, Plaintiff objected and responded on December 17, 2023. There is one Motion for these requests, which were Set One.

Plaintiff objected to Special Interrogatories numbers 36-53 on the basis of no declaration for additional discovery. However, Plaintiff states that the declaration was included in the initial mailing, and that an additional copy was provided by email in December 2023 when Plaintiff's objections were received. There has been no further response by Plaintiff to those interrogatories.

Further, for Special Interrogatories numbers 1-35, Defendant claims that Plaintiff interposed numerous improper and evasive objections, has failed to amend his responses and provide proper answers despite a meet and confer by Defendant's counsel.

Lastly, for the Requests for Production of Documents, Defendant states that none of Plaintiff's responses are proper and that there were several improper objections.

Defendant requests that the Court order amended responses and for monetary sanctions.

Plaintiff has not filed a response or opposition.

There is a second Motion for discovery propounded by Defendant on Plaintiff by mail on February 15, 2024[1]. The requests included Special Interrogatories, Set Two, Request for Production of Documents, Set Two, as well as a Declaration of Additional Discovery. No responses have been received.

Defendant requests an Order that Plaintiff's responses be submitted without objections and requesting an award of sanctions.

Plaintiff has not filed a response or opposition.

The sanctions requested under both Motions are deferred, as the Court is not satisfied that the meet and confer efforts were sufficient, prior to bringing these Motions.

[1] CCP §§ 2030.260 and 2031.260 requires written responses or objections within 30 days of receipt.

TENTATIVE RULING #16:

1. **PLAINTIFF IS ORDERED TO RESPOND TO SPECIAL INTERROGATORIES, SET ONE, NUMBERS 36-53 WITHIN 30 DAYS FROM THE DATE OF THE ORDER.**
2. **THE PARTIES ARE ORDERED TO MEET AND CONFER REGARDING THE ALLEGED DEFICIENCIES IN PLAINTIFF'S RESPONSES TO SPECIAL INTERROGATORIES, SET ONE, NUMBERS 1-35, AND REQUEST FOR PRODUCTION OF DOCUMENTS.**
    a. **THIS MATTER IS CONTINUED TO FRIDAY, SEPTEMBER 20, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.**
3. **PLAINTIFF IS ORDERED TO RESPOND TO SPECIAL INTERROGATORIES, SET TWO, AND REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO, WITHIN 30 DAYS FROM THE DATE OF THE ORDER.**
4. **REQUEST FOR SANCTIONS IS DEFERRED UNTIL FRIDAY, SEPTEMBER 20, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.**

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

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

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

17.	23CV0457	CRAMER v. EL DORADO COUNTY
Demurrer & Motion to Strike to Fourth Amended Complaint		

Plaintiff's initial Complaint was filed on April 3, 2023. The First Amended Complaint was filed on April 28, 2023, the Second Amended Complaint was filed on May 30, 2023, and the Third Amended Complaint was filed on June 30, 2023. At the hearing on December 22, 2023, the Court sustained Defendant's Demurrer with leave to amend as to Plaintiff's causes of action for breach of mandatory duties pursuant to Government Code §815.6 and negligence.

On December 27, 2023, Plaintiff filed a Fourth Amended Complaint ("4AC") alleging (1) breach of mandatory duties pursuant to Government Code §815.6[1], (2) negligence, (3) concealment, (4) conversion, (5) building without a permit, (6) professional malpractice, (7) fraud and conspiracy to commit fraud, and (8) wrongful use of civil proceedings.

Request for Judicial Notice

In support of the Demurrer, El Dorado County ("County" or "Defendant") has filed a request for judicial notice of Plaintiff's original Complaint and the four amended versions, specified provisions of the El Dorado County Zoning Ordinance, Plaintiff's claim filed with the County prior to initiating this litigation, and the County's response to that claim.

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.

Evidence Code § 452(b) authorizes the court to take judicial notice of "regulations and legislative enactments issued by or under the authority of the of the United States or any public entity in the United States." Evidence Code §452(e) allows the court to take judicial notice of "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States."

[1] Government Code § 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of the kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercises reasonable diligence to discharge the duty."

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 Declaration of attorney Joe Little sufficiently describes the meet and confer efforts.

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

County has filed a demurrer to the 4AC pursuant to Code of Civil Procedure §430.10(e) on the grounds that the 4AC fails to state facts sufficient to constitute a cause of action. The specific grounds for the demurrer are as follows:

1. All causes of action are barred because Plaintiff failed to present a claim pursuant to Government Code §§905 et seq. prior to filing this action.
2. All causes of action are barred by applicable statutes of limitations.
3. Government Code §815.6 does not set forth any mandatory duty to perform any affirmative act, and even if any such duty were established, Plaintiff has not alleged that any breach of such duty was the proximate cause of damages listed in the 4AC.
4. The second through eighth causes of action are barred by Government Code §815(a)[1] because they do not set forth any statutory grounds for liability.
5. All of Plaintiff's claims are barred by statutory immunities for public agencies set forth in Government Code §§ 815.2(b), 818.2, 821, and 818.4.
6. Plaintiff's claims for violation of Government Code §815.6 and negligence are barred by the litigation privilege of Civil Code §47(b).
7. Plaintiff's claims for concealment, conversion, building without a permit, professional malpractice, fraud and conspiracy to commit fraud, and wrongful use of civil proceedings fail because the causes of action are merely a label without any supporting factual allegations.

Plaintiff alleges that he presented a Government Code claim on January 8, 2023, with respect to the issuance of a building permit in 2015. This claim was rejected by the County as untimely under the time limits for presenting claims listed in Government Code § 911.2. Although Plaintiff's claims for concealment, conversion, building without a permit, professional malpractice, fraud and conspiracy to commit fraud, and wrongful use of civil proceedings might not be subject to those time limits for submitting government claims, they are separately barred by the applicable 90-day statute of limitations set forth in Government Code § 65009[2] and in the three-year statute of limitations pursuant to Code of Civil Procedure § 338.

The Court agrees that Plaintiff's claims for concealment, conversion, building without a permit, professional malpractice, fraud and conspiracy to commit fraud, and wrongful use of civil proceedings are merely a label without any supporting factual allegations or statutory bases. The 4AC fails to state facts sufficient to allege a claim against the County for these causes of action.

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[1] Government Code §815 provides: "Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person."

[2] Government Code § 65009(c)(1) provides: "Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced, and service is made on the legislative body within 90 days after the legislative body's decision:

* * *

(E) To…determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit.
(F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraphs (A), (B), (C), (D), and (E).

In the 4AC, Plaintiff also raises assertions regarding conduct in 2023 litigation. No government claim was ever nor has ever been brought in regards to this conduct, prior to filing the lawsuit.

A demurrer may be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defect can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Plaintiff must carry his burden of demonstrating that sufficient amendment is possible. *Id.* Where no liability exists under substantive law, leave to amend must be denied. See *Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436.

The burden "is squarely on Plaintiff" to establish a reasonable possibility that defects can be cured on amendment. *Blank v. Kirwin* (1985) 39 Cal.3d 311, 318. If Plaintiff fails to meet his burden of demonstrating how he can further amend his complaint to allege facts supporting his claims, sustaining a demurrer without leave to amend is proper. *V.C. v. Los Angeles Unified Sch. Dist.* (2006) 139 Cal.App.4th 499, 518. Leave to amend should not be granted where amendment would be futile. *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 211.

This is Plaintiff's Fourth Amended Complaint. The first three amendments were done by Plaintiff *sua sponte*. The Third Amended Complaint was subject to a successful demurrer, where the Court granted leave to amend. However, the Fourth Amended Complaint has nearly identical facts, with the addition of some purported facts and allegations relating to a criminal matter. Plaintiff included two causes of action, which are identical to what was submitted in the Third Amended Complaint – where the demurrer was sustained. The other six causes of action are simply titles and include no additional facts, case law, or statute. At this point, the Court finds that Plaintiff cannot establish a reasonable possibility that the defects can be cured on amendment, especially in light of the various statutes of limitations and the untimely government claim.

<u>Motion to Strike</u>

Defendant moves to strike Plaintiff's request for a preliminary injunction "preventing El Dorado County from allowing any structures" on the specified parcel and Plaintiff's allegations regarding the Court proceedings. Defendant's Motion to Strike argues that:

1. Injunctive relief is not available to prohibit or restrain a completed act such as a building that has already been constructed. *Huntingdon Life Sciences., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266.
2. Completion of a building project pursuant to a building permit renders moot a challenge to the issuance of a building permit that authorized the construction. *Parkford Owners for a Better Community v. County of Placer* (2020) 54 Cal.App.5th 714, 725.

3. To the extent Plaintiff's injunction addresses proposed permitting of additional structures on the references parcel, Plaintiff's appeal against such approvals was upheld by the County Board of Supervisors on January 10, 2023. 4AC, p. 2.
4. Plaintiff's allegations regarding the related matter (*Uso v. County*) are not civil causes of actions and Plaintiff has no authority to bring criminal charges.

While the Court agrees with Defendant's arguments in support of its Motion to Strike, the Motion is rendered moot by the Court's ruling sustaining Defendant's Demurrer to the Fourth Amended Complaint.

The Court has reviewed Plaintiff's Opposition, which does not alter the Court's decision.

TENTATIVE RULING #17:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**
3. **DEFENDANT'S MOTION TO STRIKE IS DEEMED MOOT.**

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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18.	22CV0690	MALAKHOV v. MARTINEZ
Motion to Compel		

On May 17, 2024, Plaintiff served Defendant with form interrogatories – general, request for production of documents, request for admissions, and special interrogatories. Responses to the interrogatories were due June 17, 2024.[1] Responses to the request for production of documents were due June 17, 2024 as indicated on the request.[2] As of June 25, 2024, Plaintiff indicates that no responses have been received. The Motion only addresses the request for production of documents and interrogatories. It is unclear whether Defendant responded to the requests for admissions, but they are not part of this Motion.

Plaintiff sent a letter to Defendant on June 19, 2024, regarding Defendant's lack of discovery requests and indicating the intention to file this Motion. Plaintiff has incurred additional attorney fees in the amount of $660.00 in addressing Defendant's failure to respond to discovery requests and this Motion, which the court finds to be reasonable upon its review of the pleadings.

When a party makes an inspection demand under Section 2031.010 of the Code of Civil Procedure and the party to whom the demand is directed fails to respond, the demanding party may move for an order compelling response and for a monetary sanction under Section 2023.030 of the Code of Civil Procedure (Code Civ. Proc. § 2031.300). When the party to whom an inspection demand has been directed fails to serve a timely response to it, that party waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018.010 et seq. of the Code of Civil Procedure (Code Civ. Proc. § 2031.300(a))[3]. Here, Plaintiff argues that Defendant Alejandro Martinez failed to timely respond to any of the discovery requests, thereby waiving any objections that he may have to the requests. Plaintiff requests that the Court compel Defendant Alejandro Martinez to fully respond to all discovery requests without exception or room for objection.

Further, if a party to whom interrogatories have been directed fails to serve a timely response, the party propounding the interrogatories may move for an order compelling

[1] Cal. Code of Civ. Proc. §2030.260(a): Within 30 days after service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them…

[2] Cal. Code of Civ. Proc. §2031.030(c)(2) requests shall specify the time for responding that is at least 30 days after service of the demand.

[3] Exception: (§ 2031.300(a)): 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 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

response (Code Civ. Proc. § 2030.290). The service and filing of interrogatories pursuant to Section 2030.010 et seq. of the Code of Civil Procedure places the burden on the interrogated party to respond by answer, the production of writings, or objection. The obligation of response must be satisfied unless excused by a protective order obtained on a factual showing of good cause why no response should be given (*Coriell v. Superior Court* (1974) 39 Cal. App. 3d 487, 492). In this case, Plaintiff argues that Defendant Alejandro Martinez has not responded with any objections or otherwise in relation to any of the discovery requests, and rather has simply willfully failed to respond timely, or at all, to any of the properly made discovery requests. Plaintiff requests that the Court compel Defendant Alejandro Martinez to fully respond to all interrogatories which have been served on him thus far.

The court shall impose a monetary sanction under Section 2023.030 of the Code of Civil Procedure against any party, person, or attorney who unsuccessfully opposes a motion to compel a response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust (Code Civ. Proc. §§ 2023.030(a), 2031.300(c)).

TENTATIVE RULING #18:

1. **THE MOTION TO COMPEL DEFENDANT'S RESPONSES TO THE FORM AND SPECIAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS IS GRANTED.**
2. **NO ORDER IS MADE REGARDING THE REQUEST FOR ADMISSIONS AS THEY WERE NOT PART OF THIS MOTION.**
3. **SANCTIONS IN THE AMOUNT OF $660.00 ARE AWARDED AGAINST DEFENDANT.**

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.

19.	22CV1352	ADAMS v. LATROBE HILLS HOMEOWNERS ASSOC.
Motion for Summary Judgment		

Before the court is defendant Latrobe Hills Homeowners Association's (hereinafter referred to as "Latrobe" or "Association") motion for summary judgment.

1. Factual Background

Latrobe is a non-profit road maintenance association established in 1977 that maintains private roads on several parcels of land in El Dorado County, California. (Mot., Separate Stmt. of Undisputed Material Facts ("UMF") No. 1.) The Association is governed by a Declaration of Protective Conditions, Covenants, and Restrictions ("Declaration"), which was recorded on July 1, 1977. (UMF No. 2.)

Section One of Article IV ("Property Rights and Easements") of the Declaration provides: "The following easements are hereby reserved on and in the Properties as indicated which easements are declared to be appurtenant to each Parcel contained in the Property: (a) A non-exclusive easement and right of way for roadways, bridle, trails, and utilities over and across the Roads are delineated on said Record of Survey or Parcel Map." (RJN No. 1.)

Section One, subdivision (b) of Article I ("Definitions") of the Declaration provides, " 'The Properties' shall mean and refer to Parcels numbered 1 through 30 inclusive, of Latrobe Hills." (RJN No. 1.) Pursuant to Section One, subdivision (c) of Article I, " 'Roads' shall mean and refer to the following: (1) Those roads in the real property hereinabove described, excluding Latrobe Road." (RJN No. 1.)

At the time the Declaration was recorded, Parcels 1 through 30 were owned by Pacific Mutual Investment Company. (UMF No. 7.) On November 30, 1977, Pacific Mutual granted to Michael and Ruby Hartzell a "non-exclusive easement for use in common with others for roads and public utilities upon those portions of Parcels 1 to 30 as are designated for such respective purposes upon that certain Parcel Map…." (UMF No. 8.) Also on November 30, 1977, the parties executed and recorded a Declaration of Covenants and Restrictions which provides that the Hartzells' land, referred to as Parcels A, B, C, and D, "shall be subject to and shall benefit from all those certain covenants, agreements, assessments and restrictions contained in [the July 1, 1977, Declaration]…." (UMF No. 9.) On May 11, 1978, the Hartzells assigned Parcel D to plaintiffs via grant deed. (UMF No. 10.)

Plaintiffs ultimately built a residence on Parcel D, which is connected to Latrobe Road by "Doublegrove Road." (See UMF No. 14.) Latrobe characterizes Doublegrove Road as a "gravel driveway" that, at the time plaintiffs purchased Parcel D, was an unnamed dirt cattle trail. (See UMF Nos. 14 & 15.)

2. Evidentiary Objections

As it relates to plaintiffs' objections to Latrobe's evidence, the court sustains Objection Number 2 and overrules Objection Numbers 1, 3, 4, 5, and 6.

As it relates to Latrobe's objections to plaintiffs' evidence, the court sustains Objection Numbers 1 through 9 and overrules Objection Number 10.

3. Request for Judicial Notice

Latrobe requests judicial notice of ten exhibits. (Exs. 1-9 & 15.) Plaintiffs object to Exhibit 9 (meeting minutes for the Jan. 17, 1986, special meeting of Latrobe Hills Homeowners Association) only. Pursuant to Evidence Code section 452, subdivisions (c) and (d), the court grants Latrobe's request for judicial notice of Exhibits 1 through 8 and 15; and denies Latrobe's request for judicial notice of Exhibit 9.

4. Standard of Review

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, citing Code Civ. Proc., § 437c, subd. (o)(2).) "Once the 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 the cause of action or a defense thereto. The plaintiff or cross-complainant 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., § 437, subd. (p)(2).)

5. Discussion

5.1. <u>First C/A for Breach of Declaration</u>

The first cause of action alleges defendant breached the Declaration by failing to maintain Doublegrove Road. In its motion for summary judgment, Latrobe argues that plaintiffs cannot establish a contractual duty to maintain Doublegrove Road.

Section One of Article IV ("Property Rights and Easements") of the Declaration provides: "The following easements are hereby reserved on and in the Properties as indicated which easements are declared to be appurtenant to each Parcel contained in the Property: (a) A non-exclusive easement and right of way for roadways, bridle, trails, and utilities over and across the Roads are delineated on said Record of Survey or Parcel Map." (RJN No. 1.)

Pursuant to Section One, subdivision (b) of Article I " 'The Properties' shall mean and refer to Parcels numbered 1 through 30 inclusive, of Latrobe Hills. Pursuant to Section One,

subdivision (c) of Article I " 'Roads' shall mean and refer to the following: (1) Those roads in the real property hereinabove described, excluding Latrobe Road." (RJN No. 1.)

Latrobe argues that Doublegrove Road is not a "road" under the Declaration because: (1) all roads that the Association is required to maintain are reflected on the parcel map attached to the Declaration, and Doublegrove Road is not identified on said map (Mtn. at 11:11–13); and (2) at the time plaintiffs purchased Parcel D, Doublegrove Road was an unnamed dirt cattle trail (Mtn. at 11:13–15).

Plaintiffs, however, argue that the issue of whether the Association is required to maintain Doublegrove Road was previously decided in the 1983 small claims action, *Latrobe Hills Homeowners Association v. Adams, et al.* (El Dorado Super. Ct., Case No. 4447.) In that case, the Association filed suit against plaintiffs for their failure to pay association dues. (UMF No. 19.) A court judgment dated October 7, 1983, states in relevant part: "The minutes of the November 6, 1977 meeting of the Latrobe Hills Homeowners Association Board of Directors reveal it was unanimously agreed to admit Mike Hartzell's sixty acre parcel, divided into four parcels, and now owned in part by the defendants herein [plaintiffs Lewis and Barbara Adams], into membership of the [Latrobe Hills Homeowners Association]." (UMF No. 19.) Latrobe appealed the judgment. (UMF No. 21.) On May 23, 1985, the Small Claims Appellate Court entered a judgment stating in relevant part: "the Homeowner's fees are waived as to the defendants [plaintiffs Lewis and Barbara Adams] for five years during which time the [Adams] are to put the road in some condition that can be maintainable. The parties are to meet and attempt an agreement. If the parties are unable to reach an agreement the Court will appoint a neutral party." (UMF No. 21.)

Plaintiffs claim the 1985 judgment shows that the court "concluded that Doublegrove Rd. was in fact a part of Latrobe and that Latrobe was therefore required to maintain Doublegrove Rd. as it did other roads within the Latrobe community." (Opp. at 5:5–8.) However, this court does not read the 1985 judgment as broadly. The 1985 judgment held that plaintiff's association fees were waived for five years. While the court appears to have contemplated that the Association could be required to maintain Doublegrove Road at some point in the future (i.e., once plaintiffs "put the road in some condition that can be maintainable"), the court did not expressly decide whether Doublegrove Road was a "road" under the Declaration. Therefore, plaintiffs cannot rely on the doctrine of res judicata to bar litigation of that issue.

Nonetheless, the court finds there is a triable issue of material fact as to whether Doublegrove Road constitutes a "road" under the Declaration. A triable issue of material fact exists if the evidence and inferences therefrom would allow a reasonable juror to find the underlying fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, 856.) Here, a jury could reasonably infer that Doublegrove Road is a road under the Declaration where the Declaration defines the term, "roads" as "[t]hose roads in [Parcels 1 through 30 inclusive], excluding Latrobe Road."

Because the first C/A for breach of Declaration involves a triable issue of material fact, the court denies the motion for summary judgment.

5.2. Second C/A for Breach of Fiduciary Duty

The elements of a breach of fiduciary duty cause of action are: (1) the existence of a fiduciary duty; (2) a breach of that duty; and (3) resulting damage. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 483.) Latrobe argues that "[p]laintiffs cannot establish a fiduciary duty to maintain Doublegrove Road because … it is not an association road such that the HOA's maintenance obligations would be triggered." (Mtn. at 15:16–18.) However, as previously discussed, the court finds there is a triable issue of material fact as to whether Doublegrove Road is a road under the Declaration. As such, the motion for summary judgment is denied.

5.3. Third C/A for Declaratory Judgment

The "actual controversy" that plaintiffs allege relates to whether the Declaration requires defendant to maintain Doublegrove Road. Again, that controversy involves a triable issue of material fact. Therefore, the motion for summary judgment is denied.

TENTATIVE RULING #19:

THE MOTION FOR SUMMARY JUDGMENT 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.

20.	**22CV0639**	**RICHARDSON v. COUNTY OF EL DORADO**
Motion to Compel		

Defendant filed a Motion to Compel Further Discovery Responses and Request for Monetary Sanctions. Plaintiff opposes, arguing the motion is untimely and unnecessary, and that he has fully complied with discovery obligations.

There is a dispute as to whether the motion was brought within an agreed upon extension, or whether that extension has passed. Each party has a different view of the discussions, complicated by a change of handling attorney at Plaintiff's firm.

Plaintiff alleges that all outstanding discovery responses were provided on July 29, 2024. Plaintiff argues that the responses complied with all statutory obligations under CCP §2030.220 and §2031.220. On July 29, 2024, Plaintiff requested that Defendant take the motion off calendar, but Defendant refused. While the supplemented responses could have been provided sooner, it seems further meet and confer efforts should have been undertaken prior to bringing this matter before the Court. After Defendant filed the motion, Plaintiff did attempt to comply, albeit 17 days after the motion. Defendant states in its reply that "most of the supplemental responses now appear code-compliant…" (Reply, p. 2) If after reviewing the supplemented answers, Defendant was still unhappy, it should have met and conferred with Plaintiff.

The court denies the motion. As to sanctions, the court finds that both parties share responsibility for the confusion that led to the filing of the motion. Therefore, the court finds that an imposition of sanctions against Defendant under these circumstances would be unjust.

TENTATIVE RULING #21:

MOTION IS DENIED. THE COURT DECLINES TO ISSUE SANCTIONS FINDING THE IMPOSITION OF SANCTIONS UNDER THE CIRCUMSTANCES TO BE UNJUST.

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.