1.	**PC20200212**	**WHITESIDE v. TABER**
Motion to be Relieved		

Counsel for the Defendant 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 Defendant will not execute a substitution of counsel form and the attorney-client relationship has broken down. Counsel states that client's conduct has rendered it unreasonably difficult to carry out representation effectively.

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 Defendants at his last known address and on counsel for Plaintiff was filed on July 31, 2024.

No hearing dates are currently scheduled for the case.

TENTATIVE RULING #1:

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). ORDER IS EFFECTIVE UPON FILING OF THE PROOF OF SERVICE INDICATED SERVICE OF THE FILED ORDER ON THE CLIENT.

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

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

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

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

2.	**24PR0196**	**ESTATE OF HARPER**
Confirm Trust Modification and Title to Trust Assets		

Austin Harper and Sara Nicolai established the Austin L. Harper and Sara R. Harper Family Revocable Trust ("Trust") and pour-over Wills on November 12, 2020. They intended all of their property to be transferred into the Trust, to care for their children after their deaths. Settlors filed for dissolution of their marriage on April 5, 2023, and received a final divorce decree on February 15, 2024. The divorce documents note that each of the spouses waives right to the other's assets upon death and that their intent was to provide for the continued support of their children.

The Schedule A to the Trust lists the Settlor's property, including real property they owned together on Champion Oaks Drive. The language of the Trust states that if the parties divorce, each Settlor is treated as predeceasing the other and the decedent is treated as dying intestate. Neither Settlor modified or revoked the Trust after the dissolution.

Austin died on June 3, 2024, and Petitioner is the current Successor Trustee. Sara disclaims all rights to recover as a beneficiary of the Trust and she resigned as Trustee on June 30, 2024. When Austin died, the Trust as to his assets became irrevocable. As part of the divorce settlement, Sara retained the Champion Oaks property and had to buy out Austin. He then took that money to purchase a property on Monitor Road.

Pursuant to Probate Code § 15403(b) the court can modify an irrevocable trust upon petition by all current and contingent beneficiaries. Prior to filing this Petition, treating the Decedent as dying intestate, Petitioner has notified the Decedent's brothers, Cory Layton, Bryce Harper and mother, Holly Roberts, who would be the statutory alternative heirs after the Decedent's children, and these parties do not object to any provisions of this Petition.

Probate Code §850 provides that a trustee may file a petition when the trustee has a claim to real or personal property, title to or possession of which is held by another. (Prob. Code §850(a)(3)(B). Trustee's claim against the Monitor Road property is to recover as the equity all values for the benefit of the Harper children, the identified beneficiaries of the trust which was purchased with funds from the Trust property. In *Estate of Heggstad* (1993) 16 10 Cal.App.4th 943, the Court held that a trust instrument may create a trust in real property and that it is not necessary for the trustor to execute a separate deed transferring the property to the trust.

Austin did not transfer the Monitor Road property to the Trust but intended that it be held in Trust and used to support his children upon his death. There was limited time between the entry of the final divorce decree and Austin's death, which seems to be a valid reason for the lack of transfer and lack of modification of the Trust documents.

TENTATIVE RULING #2:

ABSENT OBJECTION, PETITION GRANTED AS REQUESTED.

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

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

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

3.	**23CV2017**	**KRUGER v. HISUN MOTORS CORP.**
Motion for Attorney's Fees		

This case involves a claim under lemon law for a defective vehicle. On February 25, 2023, Plaintiff purchased a new 2022 Hisun Sector 550 (hereinafter "Vehicle") from Placerville Polaris & Power Tools (hereinafter "Dealership"). The Vehicle was sold with Hisun Motors Corp., U.S.A's ("Hisun") 2-year limited warranty to be free from defects in materials and workmanship. Plaintiff alleges that the vehicle has had major problems from the time of purchase, including, but not limited to, the fuel system and steering issues, yet the steering issues persist and the four-wheel drive is now inoperable.

After several attempts to resolve the matter out of court, to which Defendant failed to respond, Plaintiff filed the underlying complaint. Defendant again did not respond, and default was entered on January 26, 2024 (with an amended default entered on February 27, 2024). Plaintiff submitted a request for a default judgment, which was rejected by the court due to technical deficiencies.

Plaintiff's pending motion is regarding attorney's fees and costs as the prevailing party. However, as the court has yet to enter a judgment in the matter, there has been no determination as to the prevailing party. As such, the pending motion is premature. The court continues the matter to August 30, 2024 at 8:30 a.m. in Department 9. If at that time the motion is ripe for adjudication, the court will address the motion on its merits. If Plaintiff has incurred or will incur any additional fees prior to the next hearing, Plaintiff may file a supplemental declaration to augment the request, provided the declaration is served on Defendant at least 16 court days (plus time for service if applicable) in advance of the next hearing.

No supplemental declaration has been filed.

TENTATIVE RULING #3:

APPEARANCES REQURED ON FRIDAY, AUGUST 30, 2024 AT 8:30 AM IN DEPARTMENT NINE.

4.	23CV1663	SULLIVAN v. WAGON WHEEL MOBILE HOME PARK
Motion to Compel		

Defendants Pollack Pines Investors, LLC dba Wagon Wheel Mobile Home Park, Jay Stoops, and Skyline Pacific Properties, LLC ("Defendants") bring this Motion to Compel the in-person attendance of Kelly Sullivan ("Plaintiff").

This Motion is made pursuant to Code Civ. Proc. §§ 2020.510 and 2025.450, et seq. and by this Motion, Defendants seek an order compelling Plaintiff to attend her deposition. Defendants further request monetary sanctions against Plaintiff, for the alleged willful and deliberate refusal to comply with the Discovery Code. Defendants respectfully request that Plaintiff be ordered to appear for in-person deposition immediately and provide testimony. Defendants further respectfully submits that monetary sanctions should be awarded against Plaintiff, pursuant to *Lopez v. Watchtower Bible & Tract Soc'y of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 600; CCP §§ 2023.030 and 2023.010, in the amount of $3,060.00, for the refusal to comply with a duly served Notice of Deposition.

Request for Judicial Notice

Defendants request that the Court take judicial notice of the Complaint, correspondences between counsel, Notices of Deposition, Objections to Deposition, Case Management Statement and Deposition Transcript from July 2, 2024.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. 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.

As stated in Evidence Code §450: "Judicial notice may not be taken of any matter unless authorized or required by law." The Court grants the request to take judicial notice of the Complaint and denies the remainder of the request.

Motion

Defendants argue that they have been attempting to depose Plaintiff since February 2024 and that after repeated attempts to meet and confer with Plaintiff's counsel to find mutually agreeable dates, that Plaintiff has objected to, failed to respond, or canceled the deposition. Defendants claim that they then noticed Plaintiff's deposition on a date that Plaintiff's counsel previously offered.

Defendants claim that after not hearing from Plaintiff's counsel, on June 14, 2024, they noticed Plaintiff's deposition for July 2, 2024. They state they received an objection from Plaintiff's counsel on June 27, 2024, stating that the deposition was unilaterally scheduled. Defendants argue that the July 2, 2024, date was provided by Plaintiff's counsel via e-mail on June 3, 2024. Defendants state they told Plaintiff's counsel that the deposition would remain on calendar and that the objection was without merit. Defense counsel states they informed Plaintiff's counsel that if Plaintiff did not appear for the deposition, they would take a nonappearance and file a motion to compel.

On July 2, 2024, Defendant states that Plaintiff did not appear for the deposition and counsel was unable to reach Plaintiff's counsel. On July 8, 2024, Plaintiff's counsel provided potential dates for a deposition. Defense counsel states they agreed to August 15, 2024, if Plaintiff would agree to pay costs for the missed July 2, 2024, deposition and Plaintiff's counsel refused.

A party is entitled to take the deposition of a party before trial for the purpose of discovery. (*Meyer v. Cooper* (1965) 233 Cal.App.2d 750, 754.) Service of a deposition notice is sufficient to require a party, as well as an officer, director, managing agent, or employee, to attend the deposition to testify. (Code Civ. Proc., § 2025.280.) If a Deponent fails to attend a deposition pursuant to a proper subpoena/notice, the party seeking discovery may move the Court for an order to compel attendance [Code Civ. Proc. § 2025.450]. A Deposition Subpoena may command the attendance and testimony of the deponent, as well as the production of business records [Code Civ. Proc. §§ 2020.020; 2020.510]

A deponent who disobeys a deposition subpoena may be punished for contempt without the necessity of a prior order of court directing compliance by the witness." [Cal. Code Civ. Proc. § 2020.240]. "If a party-affiliated deponent fails to obey a court order to attend a deposition, the court may impose monetary, evidentiary, issue, or terminating sanctions against the party." [*Lopez v. Watchtower Bible & Tract Soc'y of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 600].

Plaintiff opposes the Motion, arguing in part, that Defendants had adequate notice (5 days) that the July 2, 2024, deposition would not be occurring and chose to incur the costs associated with that date. Plaintiff further argues that the dates provided by Plaintiff's counsel were tentative and needed to be confirmed, and that it is Defendant who failed to agree to a date.

The parties agree that there have been communications between counsel regarding potential scheduling and that the deposition has not occurred. Plaintiff's counsel should not be providing dates and then arguing that the dates are not available, when counsel appears to fail to respond to defense counsel to confirm the selected date. If there is a dispute as to whether the deposition must occur in person or virtually, the parties are to meet and confer on this issue.

Defendants seek sanctions in the amount of $3,060 and Plaintiff seeks sanctions in the amount of $1,750.

The court finds good cause to grant the motion to compel but finds it unnecessary for the deposition to proceed in person, given the deponent lives out of state at this time. Counsel for both parties are directed to meet and confer in order to proceed with the deposition. If the parties cannot agree on a date, the court sets the deposition on September 27, 2024 at 9 a.m. via Zoom.

Regarding sanctions, the court finds that both counsel share blame for the miscommunications that led to the missed deposition. The court finds that there was substantial justification for Plaintiff's noncompliance and therefore declines to issue sanctions.

TENTATIVE RULING #4:

1. **THE COURT GRANTS THE MOTION TO COMPEL THE DEPOSITION, BUT ORDERS THE DEPOSITION TO TAKE PLACE VIA ZOOM.**
2. **IF PARTIES CANNOT AGREE ON A DATE OR LOCATION, THE COURT SELECTS FRIDAY, SEPTEMBER 27, 2024, AT 9:00 AM VIA ZOOM FOR PLAINTIFF'S DEPOSITION.**
3. **DEFENDANTS' REQUEST FOR SANCTIONS 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.

5.	PC20200137	LI WEN SA v. EL DORADO IRRIGATION DISTRICT
Motion to Bifurcate		

El Dorado Irrigation District and A Current Adventure ("Defendants") bring this Motion, requesting that the Court bifurcate trial so that the issue of liability as to the causes of action for (1) Negligence and (2) Premises Liability are tried before the trial of any damages.

The motion is made pursuant to Code of Civil Procedure sections 598 and 1048(b) on the grounds that bifurcation of the trial is necessary to prevent extreme prejudice against the Defendants, to expedite and simplify presentation of evidence and make the trial of this matter full, fair and efficient.

Defendants argue that Plaintiff will not meet her burden for negligence and premises liability, and if so, that the "abundance of time to try Plaintiff's extensive damages claims" would be unnecessary. Motion, p. 4. Defendants note that at trial, expert testimony for medical treatment and future care will be discussed, and that testimony of lay witnesses regarding Plaintiff's alleged injuries and treatment will be called. Defendants further argue that they will be unduly prejudiced if the jury hears evidence of Plaintiff's damages before deciding on liability.

Code of Civil Procedure ("CCP ") section 598 states, in relevant part:

> "The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and. 597.5."

Similarly, CCP section 1048(b) provides that "[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action . . . preserving the trial of trial by jury required by the Constitution or a statute of this state or of the United States." Additionally, "trial courts have broad discretion to determine the order of proof in the interests of judicial economy." (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 504.

Defendants argue that not bifurcating the trial may result in not only prejudicing Defendants, but unnecessarily lengthening the trial and wasting the Court's and jury's time. The objective of CCP sections 598 and 1048 is the "avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff..." *Trickery v. Superior Court* (1967) 252 Cal.App.2d 650, 653.

The Court agrees with Defendants' arguments and there is no opposition by Plaintiffs.

TENTATIVE RULING #5:

ABSENT OBJECTION, MOTION IS GRANTED AS REQUESTED.

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

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

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

6.	**22CV0794**	**OAKLEY DESIGN BUILD & RESTORATION v. CHAN**
Motion to be Relieved		

Counsel for the Plaintiff 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 client has breached the attorney-client fee agreement and has failed to cure the breach after several requests.

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 Plaintiff at their last known address and on counsel for Defendant was filed on August 1, 2024.

A Mandatory Settlement Conference is currently scheduled on October 2, 2024, an Issues Conference is scheduled for October 25, 2024, and trial is set for November 5, 2024. The dates are listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #6:

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). ORDER IS EFFECTIVE UPON FILING OF THE PROOF OF SERVICE INDICATED SERVICE OF THE FILED ORDER ON THE CLIENT.

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.	24CV0353	WELLS FARGO BANK v. REHMAN
Motion to Deem Matters Admitted		

Plaintiff sued Defendant for the collection of a debt, and Defendant answered. Plaintiff propounded Request for Admissions on Defendant on April 2, 2024. Plaintiff states responses were due on May 7, 2024[1], but none were received. Plaintiff states they sent Defendant a meet and confer letter on June 20, 2024, and provided an extension for responses, but Defendant has failed to respond.

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] Pursuant to California Code of Civil Procedure §2033.250, "[w]ithin 30 days after service of requests for admissions, the party to whom the requests are directed shall serve the original of the response to them on the requesting party…"

Monetary sanctions are mandatory 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. (§ 2033.280(c))

TENTATIVE RULING #7:

1. **ABSENT OBJECTION, MOTION IS GRANTED AS REQUESTED.**
2. **SANCTIONS IN THE AMOUNT OF $150.00 ORDERED 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.

8.	**24CV0998**	**PERDICHIZZI v. MOUNTAIN DEMOCRAT**
Motion to Strike		

Defendants Mountain Democrat Inc., McNaughton Newspapers, Inc. dba McNaughton Media, and Odin Rascovich ("Defendants") bring this Motion to Strike ("Motion") the Complaint filed by Lisa Perdichizzi, Naja Supergreens, and Wopumnes 501c3 ("Plaintiffs"). Plaintiffs filed a Complaint on May 15, 2024, alleging six causes of action: 1) Demand for Retraction and Correction; 2) Defamation – Libel by Omission; 3) Defamation – Libel Per Se; 4) Defamation – Per Quod; 5) False Light; and, 6) Intentional Infliction of Emotional Distress. The Complaint arises from an article ("article") that was published and posted online on April 26, 2024.

The Motion is brought pursuant to Code of Civil Procedure ("CCP") §425.16, on the grounds that the causes of action alleged against Defendants arise from an act of Defendants in furtherance of their right of free speech in a public forum under the United States and California Constitutions, in connection with a public issue, and that such right will be chilled if the Complaint is allowed to stand.

Standard

CCP §425.16

> (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. **To this end, this section shall be construed broadly.**
>
> (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.
>
> (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
>
> * * *
>
> (c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that

defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

* * *

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: … (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

City of Montebello v. Vasquez, 1 Cal. 5th 409 (Cal. 2016) ("the anti-SLAPP statute is to be construed broadly so as to encourage continued participation in matters of public significance [and this directive] supports the view that statutory protection of acts 'in furtherance' of the constitutional rights incorporated by section 425.16 may extend beyond the contours of the constitutional rights themselves").

Anderson v. Geist, 236 Cal. App. 4th 79 (4th Dist. 2015) ("courts construe the anti-SLAPP statute broadly to protect the constitutional rights of petition and free speech").

Meet and Confer Requirement

The Motion does not include a declaration from counsel in compliance with CCP §435.5(a)(3) so it is unclear whether the meet and confer requirements of CCP §435.5(a) occurred or where even attempted by counsel. While counsel is expected to comply with the statute, pursuant to CCP §435.5(a)(4), even if the court finds that the meet and confer process was insufficient, that alone is not grounds to grant or deny the Motion.

Argument

1) Anti-SLAPP

CCP §425.16 provides substantive immunity from suit for claims that interfere with the exercise of speech right, including the right to publish statements in connection with issues of public interest. *Seeling v. Infinitiy Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807.

Based on the definitions included in subsection (e), the article falls within the protections of CCP §425.16. Therefore, the Court shall consider the pleadings and supporting affidavits stating the facts upon which the defense is based. CCP §425.16(b)(2). Once the Court decides that Defendants have made a threshold showing

that the challenged cause of action is one arising from protected activity, then the burden shifts to Plaintiffs to establish a probability that they will prevail on the claim. *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.

Defendants argue that they perform an important public function by informing the local community of issues of public interest, and that the newspaper articles are written and published in furtherance of the exercise of the constitutional right of free speech in connection with issues of public interest. (Esposito Dec., ¶¶5-6) Defendants allege that the article at issue in this case, "was researched and written based upon information derived from reliable sources, including public court records, and in court proceedings." (Rascovich Decl., ¶4) Defendants' note that they never received a request for retraction of the article as alleged in the Complaint. (Esposito Decl., ¶8) Because the article reported on proceedings within the El Dorado Superior Court and a dispute among residents of El Dorado County, Defendants argue that the article was a matter of public interest and therefore a valid exercise of Defendants' protected free speech rights. The Court agrees.

Barry v. State Bar of California (2017) 2 Cal.5th 318 ("ruling on an anti-SLAPP motion does not necessarily require a ruling on the merits of the plaintiff's claims; it may instead involve a determination that the plaintiff has no probability of prevailing because the court lacks the power to entertain the claims in the first place").

In this case, based upon the finding above, the burden now switches to Plaintiffs to establish a probability of prevailing. Plaintiffs filed Opposition to the Motion on April 29, 2024, which is untimely. However, to resolve the matter on its merits, the court uses its discretion to consider the Opposition.

California Civil Code §44 provides that defamation is effected by either libel or standard. Libel is "a false and unprivileged publication by writing…which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which as a tendency to injure him in his occupation." Cal. Civil Code. §45. While Plaintiffs may be able to establish the second part, they have not overcome the initial burden – which is showing that the statements are false. Truth is a complete defense to an action for defamation. *Draper v. Hellman Commercial Trust & Sav. Bank* (1928) 203 Cal. 26, 34; *Swaffield v. Universal Ecsco Corp.* (1969) 271 Cal.App.2d 147, 164. Defendants argue that Plaintiff is a private figure, but if Plaintiff were to establish that she is a public figure, she would bear the burden of proving the falsity of the defamatory statement before recovering damages. *Philadelphia Newspapers, Inc. v. Hepps* (1986) 475 U.S. 767, 768-769, 776-777. Defendants support their assertions that the article is true, complete and accurate, by arguing that it is based on research and information from reliable sources, including public court records, and basing those assertions on declarations made under penalty of perjury. (Rascovich Decl., ¶5 and Esposito Decl., ¶¶6-8)

Most of the article that Plaintiff takes issue with, includes information that seems to be provided by Rodocker or involved Rodocker (the other party in the underlying court proceedings). However, even though Plaintiff has a different take on the situation, this does not inherently make the article false. Plaintiffs have not established that the article contains false information (aside from the length of time Plaintiff had to remove the chickens from the property (1 hour versus 30 minutes) per the Court's direction at the March 14, 2024 hearing, which the court finds is a minor detail), which therefore means Plaintiffs have not established a probability of prevailing on the three causes of action for defamation. The Court strikes the three causes of action for libel.

A claim for false light is equivalent to an action for libel. *Kapellas v. Kofman* (1969) 1 Ca.3d 20, 35. As noted above, the Court does not find that Plaintiffs have established the falsity of the article. For a claim of false light, the standard goes one step further and requires proof of actual malice and compliance with the retraction requirements of California Civil Code §48a. *Briscoe v. Reader's Digest Ass'n, Inc.* (1971) 4 Cal.3d 529, 543. Defendants argue there is no evidence of actual malice, nor evidence that Plaintiff demanded a retraction in compliance with §48a. The Court agrees and strikes the cause of action for false light.

The final cause of action is for intentional infliction of emotional distress ("IIED"). The elements for establishing IIED are: (1) outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) plaintiff's suffering of emotional distress; and (3) causation. *Cervantes v. J.C. Penney Co.* (1979) 24 Cal.3d 579, 593. To meet the first element, Defendants' conduct must be so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Trerice v. Blue Cross of Cal.* (1989) 209 Cal.App.3d 878, 883; *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946; *Kraslawsky v. Upper Deck Co.* (1997) 56 Cal.App.4th 179. Truthful publication is given greater deference and is constitutionally protected if newsworthy and not so offensive as to shock community's notions of decency. *Briscove v. Reader's Digest Ass'n, Inc.* (1971) 4 Cal.3d 529, 541. The Court strikes the cause of action for IIED.

The Court returns to Defendants' Anti-Slapp argument. CCP §425.16 provides substantive immunity from suit for claims that interfere with the exercise of speech right, including the right to publish statements in connection with issues of public interest. *Seeling v. Infinitiy Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807. The court in *Seeling* held that in order for defendants to prevail on their motion to strike, they must make a threshold showing that they were sued for conduct covered by §425.16. *Id.* In that case, after finding that defendants established a prima facie case that they were sued after exercising their First Amendment right to speech in a public forum in connection with an issue of public interest, the burden shifted to plaintiff. *Id.* The court found that she needed to show that she would prevail on her claims, by demonstrating that her complaint was legally sufficient and supported by a sufficient prima facie

showing of facts to sustain a favorable judgment if her evidence was credited. *Id.* at 809. Even though in *Seeling*, the radio broadcaster referred to the plaintiff as a "local loser," "chicken butt," and "big skank" that plaintiff could not show the statements were provably false because they were statements of the speaker's subjective judgment. *Id.*

Based on the Court's finding that the article falls within §425.16 and in granting the motion to strike, the Court must address Plaintiffs' right for leave to amend. However, the case law supports that in cases involving the anti-SLAPP statute (§425.16) that denying leave to amend is appropriate.

> *Schaffer v. City and County of San Francisco* (2008) 168 Cal. App. 4th 992, 1005 (Allowing a plaintiff to amend a complaint after defendant has made a prima facie showing would undermine the statute by providing the plaintiff an escape from section 425.16's quick dismissal remedy.)
>
> *Simmons v. Allstate Ins. Co.* (2001) 92 Cal. App. 4th 1068, 1073 ("Allowing a SLAPP plaintiff leave to amend the complaint once the court finds the prima facie showing has been met would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy. Instead of having to show a probability of success on the merits, the SLAPP plaintiff would be able to go back to the drawing board with a second opportunity to disguise the vexatious nature of the suit through more artful pleading. This would trigger a second round of pleadings, a fresh motion to strike, and inevitably another request for leave to amend. By the time the moving party would be able to dig out of this procedural quagmire, the SLAPP plaintiff will have succeeded in his goal of delay and distraction and running up the costs of his opponent … Such a plaintiff would accomplish indirectly what could not be accomplished directly, i.e., depleting the defendant's energy and draining his or her resources … This would totally frustrate the Legislature's objective of providing a quick and inexpensive method of unmasking and dismissing such suits.") (Citations omitted.)

The Court's electronic file does not contain a proof of service for the motion. However, given Plaintiffs filed an opposition, the court reasonably infers that Plaintiffs received notice of the Motion. While the court tentatively is granting Defendant's motion as articulated above, the Court notes that Plaintiffs request oral argument in their opposition. While technically this request is premature as it is being made prior to the issuance of this ruling, the court uses its discretion to order the parties to appear for oral argument prior to making any final orders.

TENTATIVE RULING #8:

PARTIES ARE ORDERED TO APPEAR AT THE HEARING ON AUGUST 30, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

9.	24UD0178	STEVENSON v. TALAMANTEZ
Demurrer		

According to the Complaint, Plaintiff owns the real property on Wentworth Springs Road, and entered into a rental agreement with Defendants on May 4, 2024.[1] The agreement was for a month-to-month tenancy, with monthly rent of $525.00 payable on the first of the month. Plaintiff states that both a 3-day notice to pay rent or quit, and a 60-day notice to quit ("Notice") were served.[2] The Complaint alleges that on June 18, 2024, the period in the notice expired. Plaintiff alleges he personally handed a copy of the notice to Defendant(s) on June 12, 2024. At the time of the 3-day notice, Plaintiff alleges that the amount of rent due was $1,823.00.[3] He claims that the fair rental value of the premises is $17.50 per day.

Defendants filed a general demurrer, arguing that the Notice fails to include all the information required by Code of Civil Procedure section 1161(2). The Court finds that all information required by that section is in fact included in the Notice, and the Demurrer fails to cite any specific information that Defendants find to be lacking.

Code of Civil Procedure section 1161(2) states:

> When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an

[1] The attached Month-to-Month Rental Agreement for RV Tenants indicates that it began on January 1, 2018, and that the rental amount was $420.00 per month, plus $25.00 per month for trash, and electricity to be billed at $0.22/kwh plus $1.50 handling fee.
[2] Attached as exhibit B is a "Three (3) Day Notice to Pay Rent or Quit and Sixty (60) Day Notice to Terminate Tenancy."
[3] The amount listed on the 3-Day Notice indicates $1,823.04 for the period of April 1, 2024 through June 12, 2024.

electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due.

TENTATIVE RULING #9:

DEMURRER IS OVERRULED.

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

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

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