10-04-24
Dept. 9
Tentative Rulings

1.	**22CV1075**	**CAPI-LINCOLN, LLC v. FOYIL**
Motions to Compel		

Defendant filed two Motions to Compel – one regarding form interrogatories and one regarding production of documents. In both Motions, Defendant, who is a licensed attorney representing himself, requests $2,500 in sanctions against Plaintiff, for a total of $5,000.

Defendant states he received no responses to the aforementioned discovery requests. It seems the only meet and confer efforts were a singular letter sent to Plaintiff's counsel, and no attempts at telephone correspondence were made.

Plaintiff filed an opposition to the Motions, stating that Plaintiff does not object to an order compelling them to respond to the requested discovery, without objection, within a reasonable period of time, but they do object to paying any attorney's fees. However, the Court does not see where Defendant requests attorney's fees, only sanctions, which are mandatory under California Code of Civil Procedure §§2031.300(c) and 2030.290(c).

TENTATIVE RULING #1:

1. **DEFENDANT'S MOTIONS TO COMPEL ARE GRANTED. PLAINTIFF HAS UNTIL FRIDAY, NOVEMBER 1, 2024, TO PROVIDE RESPONSES.**
2. **SANCTIONS IN THE AMOUNT OF $150 PER MOTION, FOR A TOTAL OF $300, ARE ORDERED AGAINST PLAINTIFF.**

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2.	PC20180565	RANDHAWA, ET AL v. GILL, ET AL
Motion to Vacate Settlement		

Harjeet Randhawa and Karamjit Singh (collectively "Plaintiffs") bring this Motion to Vacate Settlement. At the mandatory settlement conference ("MSC") on April 3, 2024, the parties agreed that Garkaran Gill ("Defendant") would pay Plaintiffs $590,000.00 over a certain time. Plaintiffs state that almost immediately after the MSC they had second thoughts about the settlement. They state that Defendants basically had an interest-free loan over nearly 10-years of Plaintiffs' $527,500.00, and that Plaintiffs did not receive any portion of profits or the ownership. Additionally, Karamjit Singh still legally owns 49% of the Fairfield AM/PM but has not been given any share of the profits.

Plaintiffs point to Civil Code §1689(b)(1)[1], where a party to a contract may rescind the contract, "[i]f the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party." Plaintiffs argue their consent to the stipulated judgment was based on mistake, because the discussions put them under "significant stress" and they felt "tremendous duress" in trying to negotiate and agree to a settlement. There is a declaration by ---, wherein she states that after verbally agreeing to a settlement, she and her husband contacted their attorney the next day to rescind the acceptance. She states that she repeatedly stated that the numbers discussed during the settlement negotiations undervalued their monetary loss and emotional turmoil. She goes on to discuss why she feels the settlement figure is not sufficient. The only discussion of stress or duress is that the judge cautioned it may be difficult to win at trial on an oral contract, that collecting a judgment may be difficult, that discussions were "rapid back and forth", and that they had to come to a decision within 2 hours.

Defendants oppose, arguing that changing one's mind, attempting to re-negotiate a settled deal, or general "stress" are not grounds to set aside a mutually agreed to and completed settlement agreement. Defendants argue that Plaintiffs were represented by two attorneys at the settlement conference, and that the Court minutes clearly identify all material terms.

In settlement of the action in *Roth v. Morton's Chefs Services, Inc.*, "judgment was rendered pursuant to a stipulation dated September 16, 1983, which was supervised by the court." (*Roth v. Morton's Chefs Services, Inc.* (1985) 173 Cal.App.3d 380, 383.) The appellate court held: "In support of its contention that the trial court abused its discretion in setting aside the stipulation which resulted in the settlement of the unlawful detainer lawsuit, defendant Chefs accurately points out that public policy has long supported pretrial settlements, which are

[1] Plaintiff incorrectly cites Civil Code §1685(b).

highly favored as productive of peace and goodwill in the community. (*Gopal v. Yoshikawa* (1983) 147 Cal.App.3d 128, 130.)

The court cited *Greyhound Lines, Inc. v. Superior Court* (1979) 98 Cal.App.3d 604, 608, for the proposition that: "It is common knowledge in the legal profession that judicially supervised settlement conferences are critical to the efficient administration of justice in California. When the material terms of the settlement are agreed upon at the conference, the agreement must be enforced by the court."

A stipulated settlement is not so important, however, that it will withstand all attacks and must be supported at all costs. Ordinarily a party may be relieved from a stipulation upon timely application to the court and a hearing made on affidavits. The court thereafter exercising "its sound discretion, may set aside a stipulation entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation." (*L.A. City Sch. Dist. v. Landier Inv. Co.* (1960) 177 Cal.App.2d 744, 750)

This procedure is codified by section 473 of the Code of Civil Procedure, which provides in part: "The court may, upon such terms as may be just, relieve a party or his or her legal representative from a judgment, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect." Section 473 is applied liberally where there is a prompt request for relief and the party opposing the motion will not suffer prejudice if relief is granted. Further, "any doubts in applying section 473 must be resolved in favor of the party seeking relief," because the law "strongly favors trial and disposition on the merits." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; see also *Brown v. Superior Court* (1935) 10 Cal.App.2d 365, 367)" (*Roth v. Morton's Chefs Services, Inc.* (1985) 173 Cal.App.3d 380, 385-386)

The MSC occurred on April 3, 2024, and this Motion to Vacate Settlement was not filed until August 23, 2024. Plaintiffs were represented by counsel at the MSC, the facts stipulated have not changed, and there has been no change in the underlying conditions that could not have been anticipated. The fact that Plaintiffs had "buyer's remorse" the day after the hearing, does not seem sufficient for the Court to vacate the settlement agreed to by the parties.

TENTATIVE RULING #2:

MOTION DENIED.

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3.	**23CV1153**	**HIGH HILL RANCH, LLC v. ALTER**
Motion for Preliminary Injunction		

The Court granted the parties' Stipulation to Vacate Hearing and Enter Preliminary Injunction on September 17, 2024.

TENTATIVE RULING #3:

HEARING DROPPED FROM CALENDAR.

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4.	**24CV1325**	**BARTOLO v. DECOURVAL**
Motion to Compel		

This case involves an alleged breach of a construction contract. Defendant brings this Motion to Compel ("Motion"), requesting that Plaintiffs be required to further respond to his First Demand for Bill of Particulars ("Demand"). Looking at the documents attached to the Motion, it appears the Demand was for a production of documents, although there is no reference to the relevant Code of Civil Procedure section or indication that makes that assumption clear to the Court. Plaintiffs oppose the Motion, arguing that Defendant's demand for a bill of particulars is a defective discovery device.

Not only is the Court unsure that this was a proper discovery request, but pursuant to the California Rules of Court, Rule 3.1345, any motion involving the content of a discovery request or the responses to that request, requires that a separate statement be provided. No such separate statement was provided.

Under Code of Civil Procedure §2031.300(c) the Court is required to impose monetary sanctions against the party brining an unsuccessful discovery motion.

TENTATIVE RULING #4:

1. **MOTION TO COMPEL IS DENIED.**
2. **DEFENDANT IS ORDERED TO PAY SANCTIONS IN THE AMOUNT OF $150.00.**

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5.	**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.

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 #5:

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.**

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6.	**23CV0476**	**LENDMARK FINANCIAL SERVICES, LLC v. FAJKOS**
Claim of Exemption		

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 4, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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7.	**24CV1759**	**PEOPLE v. RICHARDSON**
Petition to Challenge Disqualified Person Determination		

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 4, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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8.	**23CV1768**	**GOODMAN, ET AL v. WORK**
Motion for Extension to Seek Default		

Richard Goodman, Kevin Goodman, and Melissa Goodman (collectively "Plaintiffs") request an extension of time to seek default judgment beyond the 45-day deadline in California Rule of Court 3.110(h). Richard Goodman is suffering from dementia and the remaining Plaintiffs (his children) are attempting to locate all relevant evidentiary documents to support the amount of damages sought from Janice Work ("Defendant").

Plaintiffs filed the Complaint on October 5, 2023, alleging negligence, physical and financial elder abuse, intentional infliction of emotional distress and declaratory relief. Plaintiffs state they successfully served the Complaint and Summons on Defendant, who appeared at the initial case management conference in February 2024, but that Defendant has not filed any responsive pleading nor communicated with Plaintiffs' counsel. On June 6, 2024, Plaintiffs' Amended Default Request was granted.

Plaintiffs argue that they were not aware that default was entered on June 6, 2024, and only became aware on August 6, 2024, when they pulled the records. Even if Plaintiffs received notice at the time of entry, they still would have needed an extension to locate remaining documents. They state that they have made significant progress and expect to have all necessary documents "shortly." The pleadings suggest an extension until September 2, 2024; however, the hearing date could not be scheduled until October 4, 2024, due to Court availability.

TENTATIVE RULING #8:

ABSENT OBJECTION, MOTION IS GRANTED. PLAINTIFFS ARE GRANTED AN EXTENSION AND ALL NECESSARY PLEADINGS MUST BE FILED BY MONDAY, OCTOBER 21, 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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8.	24CV0108	DIGUIRCO v. MARSHALL MEDICAL CENTER
Demurrer		

This case involves injuries sustained by a 39-year-old male, weighing 350 lbs, who had a known history of schizophrenia. Christopher Diguirco ("Plaintiff") presented to the emergency department at Marhsall Medical Center ("Marshall Medical" or "Defendant") for a mental breakdown at approximately 4:34 PM. At approximately 4:37 PM, while in the emergency department, he pushed past staff and exited the side door to triage. (Opp., p. 2) After a discussion with Defendant, he returned to triage and was placed on a 5150 legal hold by a County crisis worker at 5:06 PM. (Compl., ¶¶11-12) Nursing and security staff at Marshall Medical moved Plaintiff to a safe room and ordered Haldol and Zyprexa, which Plaintiff did not receive. (*Id.* at ¶13) Shortly after being placed into the safe room, he eloped from nursing, security, and other staff and jumped down a flight a stairs, seriously harming himself. (*Id.* at ¶¶14-15)

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 2 causes of action: (1) Negligence, and (2) Dependent Adult Abuse. Defendant demurs to the Second cause of action on the following grounds:

1. The complaint fails to allege sufficient facts that defendant established the requisite custodial relationship with plaintiff; that defendant committed neglect of plaintiff as defined by Welfare & Institutions Code §15610.57; or that defendant committed reckless or intentional neglect that caused plaintiff's injuries.

Requests for Judicial Notice

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

Defendant requests judicial notice of California Department of Public Health Facility Detail Information for Marshall Medical as of April 11, 2024, pursuant to Evidence Code §452(c),

which allows the court to take judicial notice of the official acts of legislative, executive, and judicial departments of the United States or any state. Plaintiff did not object to the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

Defendant's request for judicial notice is granted.

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").

While the statute requires meet and confer efforts to be made in person or by telephone, the Court finds that the correspondence sent by Defense Counsel was received by Plaintiff's Counsel, and based on the response, further attempts at meet and confer efforts would be futile.

Argument

The Elder and Dependent Adult Abuse Act ("the Act") permits enhanced remedies for a plaintiff who proves by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or financial abuse of a dependent adult arising from a custodial care relationship *and* that the defendant perpetrated such acts recklessly, oppressively, fraudulently, or maliciously. (Welf. & Inst. Code §15657)

Caretaking or Custodial Relationship

Defendant cites to *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, where the California Supreme Court held that a claim of neglect under the Act requires "significant responsibility" for attending to one or more basic needs of the dependent adult than a fully competent adult would ordinarily be capable of managing without assistance, and physicians who treated a patient at outpatient clinics did not have the requisite care or custody required. That case involved the physician's failure to refer the patient to a specialist, for a condition that necessitated additional surgeries before plaintiff's death. The court in *Winn* looked at examples of neglect enumerated in Welf. & Inst. Code §15610.57(b), which includes failure to protect from health and safety hazards. Defendant notes that the court concluded "that the distinctive relationship contemplated by the Act entails more than casual or limited interactions." *Winn, supra,* 63 Cal.4th at 158.

Defendant also cites to *Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, where the court found that the hospital did not have a robust caretaking or custodial relationship with ongoing responsibility to the patient. That case involved a patient who presented to the emergency department, was given an ECG and then sent for an MRI with the ECG pads still attached, which caused the patient to suffer burns. *Id.* The court held that the requisite relationship was not established, because the relationship was of limited duration, the hospital's attention to the patient's basic needs was incidental to the circumscribed medical care it provided, that the patient was not cognitively impaired, and there was no evidence that he could not attend to his basic needs. *Id.* at 1129. Under the facts of *Kruthanooch*, the court found that the case involved professional negligence and therefore was incompatible with a claim of neglect under the Act. *Id.* at 1122.

The *Kruthanooch* court discussed *Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, where the patient was admitted to the hospital with confusion, and that court found that the hospital had accepted responsibility for assisting the patient with acts that an able-bodied and fully competent adult would not have needed assistance with. *Id. at 1127, see Stewart, supra,* 16 Cal.App.5th at 103. The *Kruthanooch* court distinguished its facts from *Stewart*, by stating that in *Stewart*, the hospital knew "from the outset that it was accepting a patient who clearly could not make decisions on his own." *Kruthanooch, supra*, 83 Cal.App.5th at 1130.

Defendants argue that Plaintiff arrived and eloped from the emergency department at Marshall Medical within one hour of arrival and that Defendant did not assume responsibility for any of Plaintiff's basic needs.

Plaintiff responds that this case is different from *Winn* and *Kruthanooch*, because by nature of a 5150 hold, the patient is involuntarily placed into the care of the facility, with the facility assuming custody to attend to the patient's most basic needs, since the patient cannot care for themselves due to their mental state.

Defendant replies that due to the limited duration of plaintiff's stay at Marshall Medical, and because the allegations involve failure to provide appropriate care, that no caretaking relationship can be established.

Neglect

Next, Defendant argues that the Act defines neglect as, "The negligent failure of any person having the care or custody of an elder or dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." Welf. & Inst. Code §15640.57(a)(1). Defendant quotes, "'As used in the Act, neglect refers not to the substandard performance of medical services but, rather, to the 'failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.'" *Kruthanooch, supra,* 83 Cal.App.5th at 1134 [citing *Covenant Care, Inc. v. Superior Court* (2004) 32Cal.4th 771]. Defendant argues that the court in *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, requires that "plaintiff must plead and prove defendant was responsible for plaintiff's basic needs, knew plaintiff was unable to care for those needs, and then denied or withheld goods or services to meet those needs, and did so recklessly (i.e., with conscious disregard of the high probability of such injury). *Id.* at 406, citations omitted.

Plaintiff responds, stating that neglect is defined to include failure to protect from health and safety hazards. Welf. & Inst. Code §15610.57(b). Plaintiff cites to *Samantha B. v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, where the patient was admitted to a psychiatric hospital, which failed to adequately hire, monitor, or supervise one of its medical assistants and the patient (a dependent adult) was sexually assaulted by that medical assistant. That court found that the Act applied, because the hospital failed to protect from health and safety hazards. *Id*. Plaintiff asserts that being understaffed, which arguably led to plaintiff being able to injure himself, is the exact scenario a 5150 hold is designed to prevent and qualifies as a reckless failure to protect from health and safety hazards.

Defendant replies that *Samantha B.* is distinguishable because in that case, the hospital employee committed an intentional tort against the plaintiff, and this case involves allegations of failure to render medical care.

Recklessness

Defendant cites *Carter* where the court found that the alleged failure to administer proper medications and stock a crash cart, "absent specific factual allegations indicating at least recklessness (i.e., a conscious or deliberate disregard of a high probability of injury), neither constitute abuse [n]or neglect within the meaning of the Elder Abuse Act." *Carter, supra*, 198 Cal.App.4th at 408. They argue that in this case, Plaintiff makes conclusory allegations that Defendant was reckless in purported understaffing and that a prior study showed understaffing, but that Plaintiff does not draw a causal link between the alleged understaffing and his injury. Defendant argues that Plaintiff fails to plead specific facts with particularity constituting the neglect and establishing the causal link between neglect and injury. *Id.* at 407.

Plaintiff responds, arguing that he has pleaded sufficient facts to show reckless neglect looking at the *Samantha B., Delaney,* and *Covenant Care* cases. Plaintiff argues that Defendant's reliance on *Carter* is misguided because it is not good law – which is not quite accurate. The court in *Samantha B.* declined to follow *Carter* "…to the extent *Carter* can be read as holding that neglect does not include the failure to protect from health and safety hazards, we decline to follow it as directly conflicting with section 15610.57, subsection (b)(3)." *Samantha B., supra,* 77 Cal.App.5th at 99.

Plaintiff next argues that while Defendant repeatedly cites to the California Supreme Court decision in *Delaney*, that decision warrants overruling the demurrer. As the court in *Samantha B.* summarizes, *Delaney* defined recklessness to be "…the deliberate disregard of the high degree of probability than an injury will occur [and] it rises to the level of a conscious choice of a course of action with knowledge of the serious danger to others." *Id.* at 100, citations omitted.

***

When looking at the facts– Plaintiff presented to the emergency department with his mother. He weighed 350 lbs at the time. His mother told Defendant that Plaintiff was suffering from a mental breakdown and had a history of schizophrenia, he was guarded and growling at his mother and staff. He was placed on a 5150 hold. He would not allow his vitals to be taken and advised the crisis worker that he wanted to shoot himself. He pushed past staff to exit the emergency department side door to triage. He endorsed suicidal thoughts, and reported as agitated, anxious, irritable, and uncooperative. He was placed in a "safe room", and orders were placed for Haldol and Zyprexa. (Demurrer, p. 1, ¶ 1) He never received the medication. "Shortly after moving him into the room," Plaintiff was able to bypass "nursing, security, and staff" and exit the room he was placed in, jumped off a stairwell and landed face down at the bottom of the stairwell. (Demurrer, p. 1, ¶ 1)

Considering we are at the demurrer stage and considering the facts above taken in conjunction with the statute and case law, the Court overrules the demurrer. Plaintiff being

admitted on a 5150 hold is than casual or limited interactions but indicates an ongoing responsibility, sufficient to allow a finding of custodial relationship. Next, looking to the language of §15640.57(a)(1) and *Carter*, the facts certainly allow a finding that Defendant did not exercise reasonable care when faced with a 350-lb patient suffering a mental breakdown and expressing suicidal thoughts, who had already escaped from staff once. Further, its unclear how Defendant could argue that they were not responsible for Plaintiff's basic needs when he was admitted on a 5150 hold, that they were unaware Plaintiff was unable to care for those needs, and that they did not withhold services to meet those needs with a conscious disregard of the high probability of such injury. Antipsychotic medications were ordered, but not given. He was placed in a "safe room." He had already escaped once and had indicated a desire to shoot himself. Yet he was able to escape a second time and injure himself.

TENTATIVE RULING #8:

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.

9.	**23CV0940**	**SMILEY v. SMILEY**
MSJ		

TENTATIVE RULING #9:

On July 12, 2024, Defendant filed David Smiley's Notice of Motion for Summary Adjudication, David Smiley's Request for Judicial Notice in Support of Motion for Summary Adjudication, Declaration of David Smiley in Support of Defendant's Motion for Summary Adjudication, Separate Statement of Undisputed Material Facts, and David Smiley's Points and Authorities in Support of Motion for Summary Adjudication. All documents were electronically served the same day as filing.

The Motion for Summary Adjudication is requesting adjudication of causes of action numbers one, two, three, and five. On August 8, 2024, Plaintiff filed a Request for Dismissal of causes of action one, two, and three, to be dismissed without prejudice.

On September 19, 2024, Plaintiff Elizabeth Smiley's Memorandum of Points and Authorities in Opposition to David Smiley's Motion for Summary Adjudication was filed along with her Response to Undisputed Material Facts, and her Master List of Exhibits in Opposition to Motion for Summary Adjudication. All documents were electronically served on September 19th.

Defendant filed Defendant David Smiley's Reply to Undisputed Material Facts, a Declaration of David Smiley in Support of Reply to Opposition, and a Memorandum of Points and Authorities in Support of Reply to Opposition to Motion for Summary Judgment on September 26th. Plaintiff then filed objections to the evidence offered in support of Defendant's reply papers. Defendant filed a Notice of Errata on September 30th correcting a typographical error in his Reply.

<u>Request for Judicial Notice</u>

Defendant filed a Request for Judicial Notice asking the court to take notice of: (1) Judgment of Legal Separation in Marriage of Smiley, Sac. Sup. Ct. Case No. 800944, Aug. 16, 1984, and (2) Ruling after Hearing dated January 31, 2024, El Dorado County Case No. PFL20210005. Defendant has provided the court and the opposing party with copies of each of the aforementioned documents. Plaintiff has not opposed the request.

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 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, including "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

Defendant has requested judicial notice of records of Sacramento Superior Court, as well as the El Dorado County Superior Court. These records quite clearly fall within the purview of Section 452. In accordance with Section 452, Defendant has given each party sufficient notice of his request and provided the court with sufficient information to enable it to take judicial notice of the judgment. As such, Defendant's Request for Judicial Notice is granted. The court hereby takes judicial notice of: (1) Judgment of Legal Separation in Marriage of Smiley, Sac. Sup. Ct. Case No. 800944, Aug. 16, 1984, and (2) Ruling after Hearing dated January 31, 2024, El Dorado County Case No. PFL20210005.

Objections to Reply Evidence

Before addressing the substantive arguments raised in the briefs, the court must first address Petitioner's objections to the additional evidence submitted in support of Defendant's reply brief.

"The general rule of motion practice, which applies here, is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions, which is not surprising, give that it is a common evidentiary motion. Jay v. Mahaffey, 218 Cal. App. 4th 1522, 1537 (2013). Reply evidence may only be considered where exceptional circumstances dictate, and where the opposing party is given the opportunity to respond. Plenger v. Alza Corp., 11 Cal. App. 4th 349 (1992).

The court does not find that such exceptional circumstances exist in this matter. There were no new or unexpected arguments raised in Plaintiff's opposition papers. It was Defendant's burden to submit all such relevant evidence with its moving papers. Accordingly, the evidence submitted in support of Defendant's reply papers is not being considered and Plaintiff's objection is sustained.

Motion for Summary Adjudication

By way of his Motion for Summary Adjudication, Defendant argues that there is no triable issue as to any material fact and Defendant is entitled to judgment as a matter of law on causes of action numbers one, two, three, and five. However, causes of action numbers one, two, and three have been dismissed. As such, the court finds the Motion for Summary Adjudication as to those causes of action to be moot and the court declines to rule on them. The remaining question presented is whether or not Plaintiff has grounds to support a claim under

cause of action number five, for dissolution of Thunder Mountain Enterprises, Inc. and/or Elder Creek Investments, LLC.

Thunder Mountain Enterprises, Inc. (hereinafter "Thunder Mountain") is a California corporation consisting of three shareholders: Defendant with 69% ownership, Plaintiff with 13% ownership, and Jessica Nicole Smiley with 18% ownership. Plaintiff concedes that she is not a director of Thunder Mountain.

Regarding Elder Creek Investments, LLC ("Elder Creek"), the parties are in dispute as to whether Plaintiff is, or was, a member of the LLC. Defendant states that she is not, and never has been, a member of the LLC. He cites the annual Statement of Information for the LLC which is filed with the state. Plaintiff, on the other hand, submits, among other documents, a copy of the operating agreement wherein she is listed as a member.

A motion for summary adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary adjudication need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact not to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that would allow such a trier of fact to find any underlying material fact more likely than not." Id. at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996).

In the context of the matter at hand, Defendant must show that there is no dispute as to material fact regarding Plaintiff's right to assert a claim for dissolution of the corporation and the LLC. In both instances, Defendant argues that Plaintiff does not have standing to assert a claim for dissolution under the statutory framework of the California Corporations Code.

Any manager or member of a limited liability company may assert a claim for dissolution thereof. Corp. Code § 17707.03(a). The means by which an individual becomes a member of an LLC are enumerated in Corporations Code § 17704.01. One such manner of doing so is by being designated a member in the operating agreement. Corp. Code § 17704.01(c)(1). Once designated a member of the LLC, that person remains as such so long as they have not dissociated. Corp. Code § 17701.02.

Here, Plaintiff and Defendant disagree over Plaintiff's position as a member of Elder Creek. This is about as material a fact can get when it comes to an action for dissolution of the LLC. Plaintiff has provided compelling evidence to substantiate her position. Therefore, in light of this disputed material fact the court finds that Defendant is not entitled to judgment as a matter of law on this issue.

The procedure by which a corporation may be involuntarily dissolved depends on whether the corporation has been established as a close corporation in accordance with the statutory requirements of the Corporations Code. Where a corporation has been designated a close corporation, an action for dissolution may be brought by any shareholder of the close corporation. Corp. Code § 1800(a)(2)(iii). In the case of a regular corporation, only the following persons may bring suit for dissolution: "[o]ne half or more of the directors in office" or "[a] shareholder or shareholders who hold shares representing not less than 33 1/3 percent of (i) the total number of outstanding shares…or (iii) the outstanding common shares or (iii) the equity of the corporation, exclusive in each case of shares owned by persons who have personally participated in any of the transactions enumerated in paragraph (4) of subdivision (b)…" Corp. Code § 1800(a)(emphasis added). Paragraph (4) of subdivision (b) establishes one of the enumerated grounds for dissolution to be where "[t]hose in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders or its property is being misapplied or wasted by its directors or officers." Corp. Code § 1800(b)(4).

Both parties concede that Plaintiff is not a director of Thunder Mountain, and she holds 13% of its total outstanding shares. Defendant argues that this alone is sufficient to bar her from asserting a claim for dissolution. In response, Plaintiff makes two arguments. First, that Thunder Mountain is a close corporation and therefore under Section 1800(a)(2)(iii), any shareholder may bring such a claim regardless of percentage of interest held. Second, even if Thunder Mountain is not a close corporation, Defendant has engaged in mismanagement and abuse of his authority therefore his percentage of shares is to be disregarded and Plaintiff owns 31% of the remaining shares. In either case, the court finds Plaintiff's claims to be meritorious for purposes of defeating a Motion for Summary Adjudication.

Regarding the close corporation argument, Plaintiff cites the fact that there are only three shareholders to the company, Defendant, Plaintiff, and their daughter. Plaintiff has not provided information to address whether the company has complied with the requisite statutory requirements to be deemed a close corporation for purposes of Section 1800(a)(2)(iii). Nonetheless, the burden of proof rests with Defendant to establish that he is entitled to judgment as a matter of law and Defendant has not provided evidence that would require a trier of fact not to find Thunder Mountain a close corporation or to establish that Plaintiff does not have, and cannot reasonably possess evidence to show Thunder Mountain's characterization as a close corporation. Because Defendant has not met his burden, the Motion for Summary Adjudication must be denied.

Notwithstanding the foregoing, even assuming Defendant were to establish that Thunder Mountain has not complied with the statutory requirements of a close corporation, the court finds that a trier of fact could find that Defendant has engaged in the mismanagement and abuse of his authority. In that instance, his shares would be disregarded for purposes of

determining standing. Plaintiff would then hold 31% of the remaining shares which is more than enough to bring a claim for involuntary dissolution. As such, Defendant's motion could be denied on this basis as well.

For the foregoing reasons, Defendant's Motion for Summary Adjudication of cause of action number five is denied.

TENTATIVE RULING #9: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. JUDICIAL NOTICE IS HEREBY TAKEN OF (1) JUDGMENT OF LEGAL SEPARATION IN MARRIAGE OF SMILEY, SAC. SUP. CT. CASE NO. 800944, AUG. 16, 1984, AND (2) RULING AFTER HEARING DATED JANUARY 31, 2024, EL DORADO COUNTY CASE NO. PFL20210005. PLAINTIFF'S OBJECTION TO THE EVIDENCE SUBMITTED IN SUPPORT OF DEFENDANT'S REPLY DECLARATION IS SUSTAINED. THE COURT FINDS THE MOTION FOR SUMMARY ADJUDICATION OF CAUSES OF ACTION ONE, TWO, AND THREE, TO BE MOOT AS THESE CAUSES OF ACTION HAVE ALREADY BEEN DISMISSED AND THEREFORE THE COURT DECLINES TO RULE ON THESE ISSUES. DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION OF CAUSE OF ACTION NUMBER FIVE 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

10.	**22CV0794**	**OAKLEY DESIGN BUILD & REST. v. CHAN, ET AL**
MSJ/MSA		

Defendants Timothy W. Chan ("Mr. Chan") and American Contractors Indemnity Company (collectively "Defendants") move for an entry of summary judgment pursuant to California Code of Civil Procedure ("CCP") §437c on the Complaint of Oakley Design Build & Restoration, LLC ("Plaintiff"[1]) alleging (1) Breach of Contract, (2) Labor, Materials, Goods and Merchandise Sold Furnished and Delivered, (3) Conversion, and (4) On Bond to Release Mechanics Lien. Defendants seek summary judgment, or in the alternative, summary adjudication on the grounds that Plaintiff is unable to show as a matter of law that the contract complies with the requirements of a Home Improvement and Home Solicitation Contract.

Standard of Review

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

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

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

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

[1] Vicente ("Vince") Rodriguez is the contractor who operates Oakley Design Build & Restoration, LLC, so references to Plaintiff also include him as the President of the company.

Background

Following the 2021 Caldor Fire, Plaintiff was to complete painting and installation of new insulation at Mr. Chan's house. On January 24, 2022, Plaintiff prepared a bid for $75,365.67, of which $34,410.67 was dedicated to the interior of the home and $40,955.00 was dedicated to work on the exterior of the home. (Chan Decl., ¶8, Ex. A) The paint job was to consist of one coat of primer and two coats of color. On January 27, 2022, Plaintiff and Mr. Chan signed an Advanced Work Order. Mr. Chan contacted his insurance company, California Fair Plan, and the adjuster confirmed authorization for the scope of the work, but not the price.

In February 2022, Mr. Chan met with Plaintiff's subcontractor, and they discussed the exterior painting. In March 2022, a different subcontractor, Folsom's Best Painting, arrived and started the job. From March 2, 2022, to March 22, 2022, the painting was executed and completed. Mr. Chan reviewed surveillance video footage of his home and saw that the amount of paint would not have constituted one coat of primer and two coats of color paint as agreed upon. (Chan Decl., ¶13) On March 15, 2022, Mr. Chan received an updated bid from Plaintiff. The initial bid had quoted the exterior work for $40,955.00 and the updated bid increased to $84,138.48. This updated bid included $13,800.00 for insulation, which was never done, and deck stain with a clear coat, although the clear coat was never applied. (Chan Decl., ¶15)

Mr. Chan's insurance company conducted an investigation and determined that the fair value of services performed was between $15,000-$17,024.10. Including the deck stain and exterior painting, California Fair Plan approved payment in the amount of $20,984.99. However, Plaintiff refused to accept the payment and filed a Mechanics Lien in the amount of $50,845.67, followed by a lawsuit to enforce the mechanics lien.

Although the painting work was completed, Defendants argue that the job was not done earnestly, and that Plaintiff's invoices constituted price gouging. Defendants further argue that the purported contract is not compliant with the applicable standards required for a Home Improvement Contract (California Business and Professions Code §7151, et. seq.) and does not contain a Notice of Right to Cancel.

Defendants claim the Advanced Work Order did not comply with the Home Improvement Contract requirements (California Business and Professions Code §7151, et. seq.) because it did not contain: (1) notice of the right to cancel, (2) a mechanics' lien warning, (3) the right to require a performance and payment bond, and (4) the start date or end date of the work. Defendants claim that Mr. Chan maintained the right to cancel the contract until he received the notice of the right to cancel. See Cal Civ Code §1689(a)(2). By letter on April 7, 2022, Mr. Chan explicitly cancelled the contract. (Chan Decl., ¶10, Ex. C)

Mr. Chan filed a complaint with the Contracts State License Board ("CSLB") against Plaintiff on April 8, 2022.

Argument

To establish a claim for breach of contract, a plaintiff must prove: (1) The existence of a contract; (2) plaintiff performed its obligations under the terms of the contract, or plaintiff's performance thereunder was excused; (3) defendant breached the contract; and (4) plaintiff suffered damages as a result of defendant's breach. *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.

Defendants argue that Plaintiff's Advanced Work Order does not comply with the requirements of California Business and Professions Code ("BPC") §7159, which renders it void.[1] Specifically, Defendants argue that the Advanced Work Order did not comply with BPC §7159(c)(3), §7159(c)(5), §7159(d)(1)-(3), §7159(e)(4-5) and (7). The Advanced Work Order does not contain the required Mechanics' Lien language (§7159(e)(4), nor the Notice of the Seven-Day Right to Cancel language (§7159(e)(7). (Ex. B) At deposition, Plaintiff admitted that the Advanced Work Order did not contain this language. (Ex. E)

Defendants cite to *Asdourian v. Araj* (1985) 38 Cal.3d 276, 291-293, where the Supreme Court held that a contract that violates Business and Professions Code section 7159 is voidable as an illegal contract, but that "there is no indication that the Legislature intended that all contracts made in violation of section 7159 are void." (*Asdourian*, *supra*, 38 Cal.3d at pp. 291, 292.) Under the facts presented in *Asdourian*, the Supreme Court ruled that the contracts were enforceable, despite the fact that they were not in writing. The court based its decision on the following factors: (1) defendants were real estate investors, rather that homeowners, and thus "not members of the group primarily in need of the statute's protection"; (2) there was nothing 'intrinsically illegal' about the agreements between plaintiff and defendant to repair and

[1] Business and Professions Code §7151.2:
"Home improvement contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner…for the performance of a home improvement as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder…

Business and Professions Code §7151:
(a) "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, as well as the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, and shall include, but not be limited to, the construction, erection, installation, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, solar energy systems, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. "Home improvement" shall also mean the installation of home improvement goods or the furnishing of home improvement services.

remodel the residential property," and thus the contracts were not void but merely "voidable depending on the factual context and the public policies involved"; (3) "plaintiff and defendants were friends, who had had business dealings in the past, the failure to comply with the strict statutory formalities is, perhaps, understandable." (*Asdourian*, *supra*, 38 Cal.3d at pp.292, 293.)

Defendants argue that Mr. Chan is a member of the group that the statute seeks to protect, as a homeowner affected by a state of emergency, who had no legal advice regarding the purported contract, nor did he have any past dealings or relationship with Plaintiff, which would excuse the informality of the writing. The Court agrees that the Advanced Work Order does not comply with BPC §7159 and will not be enforced.

Next, Defendants argue that the home solicitation statutes[1] apply to the Advanced Work Order, because it was entered into not at the "appropriate trade premises" of the seller nor at the home of the buyer, but at a vacant house owned by the buyer. Defendants argue that the applicability of the statute is whether the contract is made somewhere other than the seller's place of business. In *Weatherall Aluminum Products Co. v. Scott* (1977) 71 Cal.App.3d 245, defendant contacted plaintiff for an insulated wall system; plaintiff sent a representative to defendant's home, where the parties signed a contract, and defendants paid a deposit. The court did not address whether the contract was negotiated at appropriate trade premises but found that even though defendants initiated contact with plaintiff, the contract still fell within the home solicitation statutes and needed to contain a notice of right to cancel. *Id.* The Court agrees that the Advanced Work Order falls within the purview of the home solicitation statutes and was required to contain a right to cancel notice.

Defendants assert that Mr. Chan had the right to cancel the home solicitation contract until Plaintiff complied with California Civil Code §1689.7(e-f). (Cal Civ Code §1689.7(g)) Review of the Advanced Work Order shows that it does not comply with the statutes. Pursuant to Civil Code §1689.6(d) and (f), cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement, and there is no specific form required. Further, Civil Code §1689.11(c) provides that if the seller performed any services pursuant to the home solicitation prior to the cancellation, that the seller is not entitled to any compensation, and if the seller services altered the property of the buyer, the seller shall restore the property. On April 7, 2022, Mr. Chan cancelled the Advanced Work Order. (Ex. C) He does not request that the property be restored to the prior condition but does argue that Plaintiff is not entitled to any compensation. Based on the statutes and the facts of this case, the Court finds Defendants successfully cancelled the Advanced Work Order.

[1] Civil Code §1689.5(a): "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars ($25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind…."

Defendants' final argument is that Plaintiff is not entitled to recovery on the theory of quantum meruit in this case, based on *Beley v. Municipal Court* (1979) 100 Cal.App.3d 5. In *Beley*, the contract did not contain the necessary notice of right to cancel. The seller had substantially completed a remodel for the buyers, who then successfully cancelled the contract, but the court found that the seller was still entitled to compensation. That case is very similar to the instant case – in that buyers invited seller to their home for the job, entered into a contract that did not require the necessary statutory language, the work was completed/substantially completed, and then the contract was cancelled. The court in *Beley* went on to say that there was nothing illegal or immoral about the contract itself or the nature of the services and materials to be furnished under it, and therefore that seller was entitled to recovery on quantum meruit for the reasonable value of the improvements buyer received. *Id.* at 8, citing *Trumbo v. Bank of Berkeley* (1947) 77 Cal.App.2d 704, 709-710.

Based on the information provided, including the investigation by Mr. Chan's insurer, who obtained bids from other companies, showing a reasonable value of $15,000-$17,024.10 for the work performed by Plaintiff, it seems this case is further distinguishable from *Beley* in that the quote given likely constitutes price gouging. Defendants offered $20,984.99, which Plaintiff refused. However, the court in *Beley* found that seller was entitled to recovery on quantum meruit for the reasonable value of the improvements buyer received and that "[i]t would be grossly inequitable to interpret the statute to mean that Seller gets no compensation even though Buyer has the benefit of several thousand dollars' worth of home improvements." *Id.* at 8-9. Defendants argue that the instant case is different than *Beley*, because here, Plaintiff's subcontractors completed the project before Plaintiff and Mr. Chan's insurer agreed on a final price for the work.

Plaintiff filed no opposition.

Based on the evidence before the court, particularly the deposition transcript of Vicente Rodriguez, who testified to the extent of work conducted on Defendant's property and that the work was completed prior to the cancellation, the court finds that as a matter of law the court cannot conclude that there are no triable issues of material fact as to whether Plaintiff provided fair services and whether the manner in which the services provided run afoul of the principles set forth in *Beley*. As such, the court denies the motion as to the second, third, and fourth causes of action.

TENTATIVE RULING #10:

1. **MOTION FOR SUMMARY ADJUDICATION IS GRANTED AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT.**
2. **MOTION FOR SUMMARY ADJUDICATION IS DENIED AS TO THE SECOND, THIRD, AND FOURTH CAUSES OF ACTION.**

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.