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| **1.** | **PCL20210495** | **CAPITAL ONE BANK v. CASTILLO** |
| **Motion to Set Aside Dismissal & Enter Judgment** | | |

Lisa Castillo ("Defendant") owed debt to Capital One Bank ("Plaintiff") in the amount of $9,336.89. On 10/24/22, parties entered into a Conditional Stipulated Settlement Agreement ("Agreement"). Defendant signed the Agreement on 10/17/22 and it was filed with the Court on 10/27/22. On 11/03/22 the Order Dismissing the Case Without Prejudice and Retaining Jurisdiction pursuant to California Code of Civil Procedure §664.6 was signed. Defendant made payments towards the balance due, totaling $4,600.00. However, the last payment was made on 01/03/24 and Defendant has now defaulted.

The California Code of Civil Procedure states, in pertinent part, that, "If parties to pending litigation stipulate . . . for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the "terms of the settlement." CCP § 664.6.

Plaintiff is requesting $5,050.89, which is the pre-judgment amount of $9,336.89 plus court costs of $314.00, less credits for payments received of $4,600.00. Motion is unopposed and counsel for Defendant was served.

**TENTATIVE RULING #1:**

**MOTION IS GRANTED.**

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

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

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| **2.** | **23CV0586** | **TATE v. PRO ENERGY SERVICES GROUP, LLC** |
| **Motion for Preliminary Approval of Class Action Settlement** | | |

This is an unopposed motion for an Order to approve a proposed class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for wage and hour violations including recovery of unpaid minimum wages and liquidated damages, recovery of unpaid overtime wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, failure to furnish accurate itemized wage statements, failure to timely pay all wages due upon separation of employment, failure to reimburse business expenses, and unfair competition. Plaintiff amended the Complaint to assert violations under the Private Attorneys General Act ("PAGA").

Specifically, the parties request the court to issue an Order as follows:

1. The Class Action and PAGA Settlement Agreement and Class Notice attached as Exhibit 1 to the Declaration of Brandon Brouillette in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, filed on or about August 23, 2024 (the "Settlement Agreement"), is within the range of possible recovery and, subject to further consideration at the Final Approval Hearing described below, is preliminarily approved as fair, reasonable, and adequate. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement.
2. For purposes of settlement only, the Court provisionally and conditionally certifies the following class: all persons employed by Defendant Pro Energy Services Group, LLC ("Pro Energy") in California and classified as a non-exempt hourly employee who worked for Pro Energy during the Class Period of April 20, 2019, to June 5, 2024.
3. The Court finds the Settlement Class, consisting of approximately 1,474 members, is so numerous that joinder of all members is impracticable, and that the Settlement Class is ascertainable by reference to the business records of Pro Energy.
4. The Court finds further there are questions of law and fact common to the entire Settlement Class, which common questions predominate over any individualized questions of law or fact, and these common questions include (1) whether Pro Energy paid Settlement Class Members for all hours worked, including overtime hours, at the correct hourly wage; (2) whether Pro Energy provided Settlement Class Members with all required meal periods on a compliant basis; (3) whether Pro Energy provided Settlement Class Members with all required rest periods on a compliant basis; (4) whether Pro Energy provided with required expense reimbursement; (5) Settlement Class Members with compliant wage statements; and (6) whether Pro Energy paid all wages due on separation of employment.
5. The Court finds further the claims of named Plaintiffs Charmaine Tate and Dave Crockett are typical of the claims of the Settlement Class, and that they will fairly and

adequately protect the interests of the Settlement Class. Accordingly, the Court appoints Charmaine Tate and Dave Crockett as the Class Representatives, and appoints their counsel of record, Zachary M. Crosner, Jamie Serb, Brandon Brouillette, and Crosner Legal, PC, and Larry Lee and Simon Yang, and Diversity Law Group, as Class Counsel.

6. The Court finds further that certification of the Settlement Class is superior to other available means for the fair and efficient adjudication of the controversy.
7. The Court finds further that, in the present case, the proposed method of providing notice of the Settlement to the Settlement Class via First Class U.S. Mail to each Settlement Class Member's last known address, is reasonably calculated to notify the Settlement Class Members of the proposed Settlement and provides the best notice possible under the circumstances. The Court also finds the Notice of Class Action Settlement form is sufficient to inform the Settlement Class Members of the terms of the Settlement and their rights thereunder, including the right to object to the Settlement or any part thereof and the procedure for doing so, their right to exclude themselves from the Settlement and the procedure for doing so, their right to obtain a portion of the Settlement proceeds, and the date, time and location of the Final Approval Hearing. The proposed Notice of Class Action Settlement and the procedure for providing Notice set forth in the Settlement Agreement, all are approved by the Court.
8. Under the terms of the Settlement Agreement, the Court approves the Parties' selection of Phoenix Settlement Administrators as the Settlement Administrator. The Settlement Administrator is ordered to mail the Class Notice to the Settlement Class Members via First-Class U.S. Mail as specified in the Settlement Agreement, and to otherwise carry out all other duties set forth in the Settlement Agreement. The Parties are ordered to carry out and comply with all terms of this Order and the Settlement Agreement, and particularly with respect to providing the Settlement Administrator all information necessary to perform its duties under the Settlement Agreement.
9. Any member of the Settlement Class who wishes to comment on or object to the Settlement or any term thereof, including any proposed award of attorney's fees and costs to Class Counsel or any proposed representative enhancement to the Class Representatives, shall have forty-five (45) days from the mailing of the Class Notice to submit his or her comments and/or objection to the Settlement Administrator, as set forth in the Settlement Agreement and Class Notice.
10. Any member of the Settlement Class who wishes to exclude themselves from the Settlement shall have forty-five (45) days from the mailing of the Class Notice to submit his or her Request for Exclusion to the Settlement Administrator, as set forth in the Settlement Agreement and Class Notice.

11. The Settlement Administrator is ordered to file a declaration in advance of the Final Approval Hearing attaching and authenticating all Requests for Exclusion, if any, and further attaching and authenticating all Objections, if any.
12. A Final Approval Hearing is hereby set a date to be decided at 8:30 a.m. in Department 9 of the El Dorado County Superior Court, to consider any objections to the Settlement, determine if the proposed Settlement should be found fair, adequate and reasonable and given full and final approval by the Court, and to determine the amount of attorney's fees and costs awarded to Class Counsel, the amount of any representative enhancement award to the Class Representative, and to approve the fees and costs payable to the Settlement Administrator. All legal memoranda, affidavits, declarations, or other evidence in support of the request for final approval, the award of attorney's fees and costs to Class Counsel, the enhancement awards to the Class Representatives, and the fees and costs of the Settlement Administrator, shall be filed no later than sixteen (16) court days prior to the Final Approval Hearing. The Court reserves the right to continue the Final Approval Hearing without further notice to the Settlement Class Members.
13. Provided he or she has not submitted a timely and valid Request for Exclusion, any Settlement Class Member may appear, personally or through his or her own counsel, and be heard at the Final Approval Hearing regardless of whether he or she has submitted a written objection

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

**(a) Court approval after hearing**

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

**(b) Attorney's fees**

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

**(c) Preliminary approval of settlement**

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

**(d) Order certifying provisional settlement class**

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

**(e) Order for final approval hearing**

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

**(f) Notice to class of final approval hearing**

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

**(g) Conduct of final approval hearing**

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

**(h) Judgment**

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

**TENTATIVE RULING #2:**

**APPEARANCES REQUIRED ON FRIDAY, OCTOBER 11, 2024, AT 8:30 AM IN DEPARTMENT NINE FOR THE PRELIMINARY SETTLEMENT HEARING AND TO IDENTIFY A TIME AND DATE FOR THE FINAL APPROVAL HEARING.**

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**COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

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| **3.** | **23CV0457** | **CRAMER v. EL DORADO COUNTY** |
| **Motion for Reconsideration** | | |

California Code of Civil Procedure §1008:

> (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and *based upon new or different facts, circumstances, or law*, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.
> (emphasis added)

"A motion for reconsideration under section 1008, subdivision (a) is not focused on error-correction." *Global Protein Products, Inc. v. Le* (2019) 42 Cal.App.5th 352, 364 ("Like a renewed motion, it asks the trial court to reconsider its earlier ruling either based on additional evidence or new law.")

Plaintiff Cramer filed an Objection to Ruling on August 16, 2024, and a Motion to Reconsider/Objection to Demurrer on August 26, 2024. Plaintiff takes issue with the ruling but does not present any new facts, circumstances, or law, that were not available at the time of the ruling.

Defendant opposes on the grounds that no new facts or circumstances have been presented, and that the newly cited cases are years old and are not new law. Defendant is not seeking sanctions for a frivolous motion at this time.

**TENTATIVE RULING #3:**

**MOTION IS DENIED.**

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

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| **4.** | **23CV0465** | **LEMIRE v. AEROMETALS INC, ET AL** |
| **Motion to Quash** | | |

Dustin Lemire ("Plaintiff") moves for an order quashing or modifying the deposition subpoenas for production of business records served on Kaiser Roseville and Kaiser Fair Oaks, by Aerometals, Inc. ("Defendant"). Alternatively, Plaintiff requests a protective order with first look procedure to protect Plaintiff's privacy rights and the privacy rights of third parties. Plaintiff also seeks sanctions against Defendant and/or its counsel in the amount of $3,150 for reasonable costs and attorney's fees.

This motion is made pursuant to Code of Civil Procedure ("CCP") §§ 128, 1985.3(g), 1987.1, 1987.2(a), 2023.030, and 2025.420 and on the grounds that the subpoenas (1) violate Plaintiff's right to privacy, (2) violate third-party privacy rights, (3) seek information protected by the psychotherapist/patient privilege, and (4) are overbroad as to scope and time.

Plaintiff is a prior employee of Defendant, who was terminated and thereafter brought this case for several causes of action, including physical disability harassment and discrimination, retaliation, interference, failure to accommodate, failure to engage in interactive process, and failure to prevent harassment, discrimination, and retaliation. Plaintiff states that the subpoenas to his medical providers seek all medical records related to any diagnosis of and treatment for any mental and emotional pain, distress, discomfort, stress, and anxiety – in other words, his entire mental health medical history for the last 3 years without limitation.

Defendant opposes, asserting that Plaintiff is alleging he was harassed, discriminated, and retaliated against during his employment on account of a disability and as a result, sustained and continues to suffer from severe emotional distress, mental and emotional pain, discomfort, lack of confidence, stress, and anxiety.

Defendant argues that the California Supreme Court has long held that plaintiffs may not withhold information which relates to any physical or mental condition they have put in issue by bringing a lawsuit. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 864*; In re Lifschutz* (1970) 2 Cal.3d 415, 431- 433.)

Although under Evidence Code sections 994 and 1014, a patient has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the patient and its physician or psychotherapist if the privilege is claimed by the holder of the privilege, under the patient-litigant exception, there is no privilege as to a communication relevant to an issue concerning the condition of the patient if such issue has been tendered by the patient. (Evid. Code, § 996, subd. (a); Evid. Code, § 1016, subd. (a). Further, Defendant argues, Plaintiff testified that he has only treated with a family medicine doctor regarding his anxiety and emotional distress. A psychotherapist, under Evidence Code section 1010, includes a licensed psychologist, or a doctor who devotes, or is reasonably believed by the patient to

devote, a substantial portion of his or her time to the practice of psychiatry. (Evid. Code, § 1010, subds. (a), (b).

Defendant requests sanctions against Plaintiff for bringing this motion without substantial justification, and an order that (1) Plaintiff sign a medical authorization agreeing to the release of his medical, billing, and mental health records to Kaiser, (2) Aerometals serve subpoenas on Kaiser seeking Plaintiff's medical and billing records from September 1, 2021 to the present, and (3) Kaiser produce the records to a third-party neutral, who will review the documents, make necessary redactions and withholding of documents, and only release limited records as to the exact mental condition Plaintiff has placed at issue: records relating to any diagnosis of and/or treatment for any mental and emotional pain, distress, discomfort, stress, and anxiety, and (4) parties stipulated to and split the costs of the neutral party.

While the Court understands a right to privacy, Plaintiff has undisputably put his mental condition at issue in this litigation, and Defendant has a right to receive those records in defending against Plaintiff's claims. The California Supreme Court has held that where a plaintiff's mental and emotional condition is relevant to their claim, in balancing, they have waived their right to privacy with respect to those ailments. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 839-842; See also *In re Lifschutz*, supra, 2 Cal.3d at p. 439 [holding that in a civil assault suit where plaintiff alleged severe mental and emotional distress, a psychiatrist had no right to refuse to produce records as to the psychiatric treatment Plaintiff received over a six-month period approximately ten years earlier, because neither Plaintiff nor the psychiatrist had made any claim that the subpoenaed records were not directly relevant to Plaintiff's alleged injuries.].)

By testifying that he was diagnosed with anxiety before his employment, and by bringing this lawsuit, Plaintiff has directly put at issue his mental condition before, during, and after his employment. One who has placed at issue their mental condition "cannot have his cake and eat it too." (*In re Lifschutz* (1970) 2 Cal.3d 415, 434 [quoting *San Francisco v. Superior Court of San Francisco* (1951) 37 Cal.2d 227, 232.]. Defendant has proposed a first look procedure involving a third-party neutral, to minimize privacy intrusion so that Defendant is only given the relevant documents and information. Further, the subpoenas are limited to the time at the start of Plaintiff's employment to present – a mere three-years, and does not request records from before his employment, despite his testimony that it was a diagnosed condition at his time of hire.

Per the September 30, 2024 declaration of Defendant's counsel, counsel spent at least 4 hours related to this motion and charges $355 per hour. The court finds the time expended and the billing rate to be reasonable and finds that this total of $1,420 is a reasonable amount to award to Defendant for Plaintiff's making of this motion which the court finds was without substantial justification.

Upon review of the file, there is another matter on calendar for October 18, 2024, which appears to be duplicative. The court vacates this matter from the court's calendar.

**TENTATIVE RULING #4:**

1. **PLAINTIFF'S MOTION TO QUASH IS DENIED.**
2. **PLAINTIFF'S REQUEST FOR SANCTIONS IS DENIED.**
3. **IT IS ORDERED THAT:**
   **(1) Plaintiff sign a medical authorization agreeing to the release of his medical, billing, and mental health records to Kaiser;**
   **(2) Aerometals serve subpoenas on Kaiser seeking Plaintiff's medical and billing records from September 1, 2021, to the present;**
   **(3) Kaiser produce the records to a third-party neutral, who will review the documents, make necessary redactions and withholding of documents, and only release limited records as to the exact mental condition Plaintiff has placed at issue: records relating to any diagnosis of and/or treatment for any mental and emotional pain, distress, discomfort, stress, and anxiety; and**
   **(4) Parties stipulate to and split the costs of the neutral party.**
4. **DEFENDANT'S REQUEST FOR SANCTIONS IN THE AMOUNT OF $1,420 IS GRANTED AGAINST PLAINTIFF FOR BRINGING AN UNSUCCESSFUL MOTION UNDER CCP §2023.030(a) WITHOUT SUBSTANTIAL JUSTIFICATION.**
5. **HEARING ON OCTOBER 18, 2024 IS VACATED.**

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| **5.** | **23CV2111** | **HENDRICKS v. FREER** |
| **Motion to Compel & Sanctions** | | |

Defendant Freer ("Defendant") filed a Motion to Compel Plaintiff Holdbrook's ("Plaintiff") further responses to requests for production on June 25, 2024, and the Motion was set for hearing on August 16, 2024. Plaintiff filed an Opposition on August 2, 2024. On August 13, 2024, Defendant withdrew the Motion to Compel.

Plaintiff seeks a total of $5,763.00 in sanctions - $3,315.00 for the initial Opposition and $2,448.00 for the additional briefing.

Code Civ. Proc. § 2031.310(h) states in relevant part: "the court shall impose a monetary sanction… against any party, person, or attorney who unsuccessfully makes… a motion to compel further response to a 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." Plaintiff argues that withdrawing a motion brings it within the definition of an "unsuccessful motion" even though it was not ruled upon.

Plaintiff argues the only way that Defendant can avoid sanctions in this situation would be to argue that her motion was substantially justified despite being abandoned. Substantial justification only exists when the unsuccessful party shows the motion was necessitated by the prevailing party's failure to meet and confer in good faith or when there is a legitimate dispute on the merits. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.)

Defendant responds, arguing that the Motion to Compel was incomplete but not unsuccessful, that the sanctions request is invalid because the Motion is moot, that Plaintiff requests additional sanctions despite lack of filing or service of motion, that Defendant acted with substantial justification, and that the amount of sanctions is unjustified because it seeks sanctions for totally clerical work.

Upon its review of the pleadings, it appears that the meet and confer efforts were limited to exchanging letters, despite Defendant's offer to discuss the matter further, which the court reasonably infers to mean over the phone. It is unfortunate that the parties did not engage in more robust meet and confer efforts, which the court would deem to be an actual conversation to try to resolve the conflict rather than dueling letters with competing legal positions. Such efforts may have negated this costly motion practice altogether. Additionally, based upon the filed pleadings, the court finds that the Motion falls within the legitimate dispute on the merits category.

As such, the court finds substantial justification for the motion and denies the sanctions request.

**TENTATIVE RULING #5:**

**REQUEST FOR SANCTIONS IS DENIED.**

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| 6. | 23CV0070 | MANTLE GROUP INC. v. MCCLAFLIN, ET AL |
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| **Motion for Terminating Sanctions** | | |

Defendant Paula Roggy ("Defendant Roggy" or "Roggy")) moves the Court for an Order imposing sanctions against Mantle Group, Inc. ("MGI" or "Plaintiff") pursuant to Code of Civil Procedure ("CCP") §128.7 as follows:

1. An order striking the First Amended Complaint ("FAC") and entering the dismissal of the FAC against Defendant Roggy, with prejudice;
2. Monetary sanctions in the amount of $4,335.00 against Plaintiff, representing reasonable attorney fees and other expenses incurred as a result of Plaintiff's violation of CCP §128.7; and,
3. Monetary penalty payable to the Court in an amount no greater than is sufficient, in the Court's discretion, to deter repetition of conduct in violation of CCP §128.7.

Defendant Roggy brings this Motion on the rounds that the operative complaint is a frivolous filing that has no basis in fact or law and has been filed for the improper purpose of harassment and seeking to increase the cost of litigation. Defendant further argues that by way of an earlier motion for sanctions by Defendant Pacific Power Partners and the resulting ruling, that Plaintiff was specifically and directly put on notice of the pleading's lack of factual or legal merit.

Request for Judicial Notice

Defendant Roggy requests that the Court take judicial notice of a printout from the California Secretary of State website showing Plaintiff Mantle Group, Inc.'s history. Pursuant to Evidence Code §452(c) and (h), Defendant's request is granted.

Motion

Defendant Roggy argues that Plaintiff's Complaint sets forth a variety of causes of action arising from other Defendants' alleged failure to honor an option agreement for the 2019 purchase of vacant land. Defendant argues that despite Plaintiff being aware of its claim's objective frivolity as to Roggy, in addition to the 21-day safe harbor required by California Code of Civil Procedure ("CCP") §128.7, Plaintiff has not dismissed Roggy and the claims affecting her from the case.

Defendant Roggy argues that MGI's tortious interference claim irrecoverably fails. As alleged by MGI in its FAC, the Option it had with other Defendants was breached in 2019. Roggy argues there is no allegation, nor can there be an allegation as required for such an interference claim, that Roggy caused that breach in 2019 because Roggy was not in the picture until 2021.

Moreover, from 2017 to 2022, MGI was a suspended corporation. MGI was suspended by both the California Secretary of State ("SOS") and California Franchise Tax Board ("FTB"). As such, MGI could not exercise any corporate powers, rights, or privileges. Nor could it sell, exchange, or transfer property. In other words, Defendant Roggy states, MGI could not exercise the Option. Further, MGI's FTB suspension was a complete bar to it acquiring the Property. Accordingly, MGI could not have purchased the Property in 2019, and specific performance retroactively forcing the sale has no basis in law or equity.

Defendant Roggy argues that because MGI knows that this action is without legal and factual merit at to Roggy, the Court should issue terminating sanctions pursuant to California Code of Civil Procedure § 128.7, as well as monetary sanctions against MGI in the amount of $4,335.00, for recovery of attorneys' fees and costs associated with this Motion.

> "By presenting to the Court, whether by signing, filing, submitting, or later advocating, a pleading… an attorney… is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
>
> (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (2) The claims… therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
>
> (3) The allegations and other factual contentions have evidentiary support or, if specifically, so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

Cal. Civ. Proc. Code § 128.7(b)(1)-(3)

In this case, MGI has filed and maintained claims, based on facts and causes of action that it knows to be objectively frivolous and not supported by law or fact as to Roggy. First Defendant argues there is no allegation – and there can be no allegation – that Roggy caused the Lease nor Option to be breached in 2019.

Second, Defendant argues for all relevant periods, specifically from: 1) the time for MGI to exercise the Option, 2) to the time to open escrow, 3) to the time to purchase the Property, and 4) beyond the date the other party purchased the Property, MGI was a suspended corporation. As an SOS suspended corporation, MGI could not exercise any corporate powers, rights, or privileges. Cal. Corp. Code § 2205. Moreover, as an FTB suspended corporation, MGI could not transact for real property. Cal. Rev. & Tax Code § 23302 (d).

Accordingly, Defendant states that MGI's assertion of claims it knows have no legal or factual basis constitutes harassment, and sanctionable conduct associated with having brought

unreasonable and objectively frivolous claims. *Bacur v. Ahmad* (2016) 244 Cal. App. 4th 17, 194, review denied Apr. 4, 2016; *Pollock v. Univ. of S. Cal*. (2003) 112 Cal. App. 4th 1416, 1431-32. The claims are not warranted by law and lack sufficient evidentiary support. Cal. Civ. Proc. Code § 128.7(b)(2), (3). Upon receipt of Roggy's draft motion during the "safe harbor" period, MGI was apprised of the duty to re-evaluate the maintenance of their frivolous claims. *Bucur*, 244 Cal. App. 4th at 195.

Objective Frivolity

An attorney or party who presents a pleading to the Court makes an implied "certification" as to its factual and legal merit. Cal. Civ. Proc. Code § 128.7; *Murphy v. Yale Materials Handling Corp.*, (1997) 54 Cal. App. 4th 619, 623. That certification represents that the pleading is not presented primarily for an improper purpose, such as to harass or needlessly increase litigation cost, and is warranted by existing law and that the factual contentions therein have "evidentiary support." See Cal. Civ. Proc. Code 128.7(b)(1)-(3). A violation of any of these certifications is grounds for sanctions. *Eichenbaum v. Alon* (2003) 106 Cal. App. 4th 967, 976 (citing California Code of Civil Procedure 128.7(c) for the proposition that "[t]he subdivision requires that 'all of the following conditions [be] met'[;] [a] violation of any of them may give rise to sanctions').

"A claim is objectively unreasonable if any reasonable attorney would agree that [it] is totally and completely without merit." *Peake v. Underwood* (2014) 227 Cal. App. 4th 428, 440, as modified on denial of reh'g (July 17, 2014) (brackets in original; internal quotation marks and citation omitted). A court may impose an appropriate sanction upon attorneys, law firms, and parties (together) responsible for the violation of the certification requirement in California Code of Civil Procedure § 128.7. See *Peake*, 227 Cal. App. 4th at 449 (sanctioning both the party and counsel). Among the available sanctions associated with objectively frivolous pleadings are monetary and non-monetary sanctions. Cal. Civ. Proc. Code § 128.7(d).

In the instant matter, beginning no later than November 1, 2017, which was more than two years before MGI's alleged attempt to exercise the Option, MGI was stripped of all rights, powers, and privileges it otherwise would have possessed but for its failure to pay its franchise taxes. MGI remained bereft of its rights, powers, and privileges until no earlier than May 11, 2022. Unenforceable contracts are not sufficient for tortious interference claims. *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Vill. Square Venture Partners* (1997) 52 Cal. App. 4th 867, 879. Due to MGI's suspended status at the time of the property listing and sale, Defendant Roggy could not have tortiously interfered with any alleged contract MGI had.

Sanctions

Terminating sanctions against a party and monetary sanctions against counsel acting in bad faith are permissible under California Code of Civil Procedure § 128.7. "Under Code of Civil Procedure § 128.7, a court may impose sanctions for filing a pleading if the court concludes the

pleading was filed for an improper purpose or was indisputably without merit, either legally or factually." *Peake*, 227 Cal. App. 4th at 440 (citing *Guillemin v. Stein* (2002) 104 Cal. App. 4th 156, 168).

Further, termination of a party's case is supported by case law. In *Peake*, the plaintiff sued the defendant on a statutory claim for failing to disclose defects in the sale of real property. The defendant moved for California Code of Civil Procedure § 128.7 sanctions premised on documentary evidence showing that plaintiff's case had no factual or legal basis and was objectively frivolous. *Peake*, 227 Cal. App. 4th at 434-35. After considering the submissions, the trial court issued a minute order tentatively granting the defendant's sanctions motion, stating it found "plaintiff and her attorneys' maintenance of her complaint against [defendant was] baseless and utterly lacking in legal merit." The court said the evidence established that "at the close of escrow, [plaintiff] had all the information necessary and that the brokers satisfied all their duty by supplying all reports" and "there is nothing that plaintiff or her counsel can point to establishing that Mr. Ferrell failed in his Civil Code §§ 1102 and 2079 inspection disclosure duties." *Id*. at 439. The trial court affirmed its tentative, dismissing the plaintiff's claims against the defendant and sanctioned the plaintiff and her attorney, jointly and severally, in the amount of $60,000.00, reflecting the defendant's attorney fees incurred in defending the action. *Id*. at 440. After thoroughly analyzing the purpose of the sanctions statute, the appellate court determined the trial court did not abuse its discretion in imposing the sanctions. *Id*. at 450.

No opposition was filed.

**TENTATIVE RULING #6:**

1. **MOTION IS GRANTED.**

**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. | 22CV0205 | MULTI-HOUSING TAX CREDIT PARTNERS v. CBM-96 |
|---|---|---|
| **Motion to Compel** | | |

Defendant and Cross-Complainant CBM-96, LLC ("CBM-96" or "Defendant") submits this Motion to Compel ("Motion") further responses to its Requests for Production of Documents (Set 2) (the "Requests") and Form Interrogatories (Set 2) (the "Interrogatories") to Plaintiff and Cross-Defendant Multi-Housing Tax Credit Partners III ("MHTCP" or "Plaintiff"), arguing that MHTCP has in bad faith interposed frivolous objections and evasive answers and has otherwise refused to cooperate in responding to CBM-96's discovery demands.

Background (per CBM-96)

There is a different lawsuit, between MHTCP and Ronald D. Bettencourt ("Bettencourt"), where MHTCP brought the same three claims against Bettencourt that it now brings against CBM-96. Both cases involve water intrusion damages at the Placer Village Apartments (the "Project"). The other case went to Arbitration, where it was decided that Bettencourt was not liable on any of the claims, and the Court confirmed that arbitration award in May 2023. The parties to the prior case engaged in discovery, including production of documents relating to water intrusion at the Project and MHTCP's purported damages as of that time. CBM-96 is informed and believes that MHTCP has continued to perform investigatory and remediation work at the Project since 2022, and ongoing, but MHTCP has not produced any documents relating to the Project in nearly two years.

MHTCP filed its Complaint in this case on February 16, 2022, alleging claims for breach of contract, declaratory relief, and fraud against CBM-96. Notably, CBM-96 is an LLC formed in 1996 by Bettencourt and others. The Complaint alleges the same basic facts as in the Prior Arbitration.

Discovery

On March 1, 2024, CBM-96 served its Requests for Production of Documents (Set 2) and Form Interrogatories (Set 2) on MHTCP. CBM-96 asserts that good cause exists for both sets of discovery demands, as they seek information regarding the scope and the basis for damages claimed by MHTCP. MHTCP alleges that it had investigated the water intrusion damage at the Project, learned that there were "pervasive defects and deficiencies in the original construction of the Project" and seeks several million dollars in damages as a result. By the discovery demands, CBM-96 is seeking to learn whether any of the damages MHTCP seeks were due to anything other than original design and construction defects.

The Requests contained two demands: all documents relating to water intrusion at the Project that MHTCP contends were not caused by original design or construction defects, and all documents relating to damages that MHTCP contends it sustained that were not caused by the

original design or construction defects. The Interrogatories also sought information relating to MHTCP's damages that are not related to original construction or design defects. At issue seem to be Interrogatories number 7.1-7.3, 8.1, 8.7-8.8, 9.1-9.2, 12.1-12.5, 12.7, and 14.1-14.2.

On April 12, 2024, MHTCP served its responses to the Requests and Interrogatories. To the Requests, MHTCP stated four objections to each request – overbroad as to time; seeks documents that are equally, if not more, accessible to CMB-96; seeks documents that are protected by attorney-client privilege, work product doctrine, or other applicable privilege or protections; and seeks premature expert discovery. MHTCP also replied that it "has no responsive, non-privileged documents in its possession, custody, or control other than those previously produced by the parties" in the Prior Arbitration two years ago. MHTCP objected to each of the disputed Interrogatories on the grounds that they purportedly seek premature disclosure of expert opinion and information that is equally, if not more, available to CBM-96. CBM-96 argues that MHTCP provided no substantive response to any of the disputed Interrogatories.

Meet and Confer Efforts

Based on the Loughrey Declaration, the Court is satisfied that the parties made sufficient meet and confer efforts in an attempt to resolve this issue without court involvement. However, based on the opposition, MHTCP presents a fairly different overview of the discussions.

Legal Standard

California Code of Civil Procedure §§ 2030.300 and 2031.310 provide the statutory basis for this motion to compel further responses to interrogatories and requests for production. "Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... Discovery may relate to the claim . . . of any other party to the action . . . [ and discovery] may be obtained ... of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property." (Code Civ. Proc. § 2017.010.)

Argument

CBM-96 argues that MHTCP's responses to the Requests are deficient, because CCP §§ 2031.210(a) and 2031.240 requires a party to "respond separately to each item or category of item" by stating that it "will comply with the particular demand," that it "lacks the ability to comply with the demands," or that it objects to the particular demand, and that a responding party who objects to a demand for production must identify with particularity the document and set forth clearly the extent of, and the specific ground for, the objection and/or a particular privilege.

In response to MHTCP's objection that the requests are overbroad as to time, CBM-96 responds that the Requests cover the same period of time as MHTCP's allegations, and that MHTCP has not identified anything overbroad or burdensome.

In response to MHTCP's objection that the requests seek documents that are equally, if not more, accessible to CMB-96, CMB-96 states that the investigatory and remediation work at the Project has continued since 2022 and no new documents have been produced during the past two years. CBM-96 argues that if MHTCP has any relevant responsive documents, it must produce them and if MHTCP has no relevant responsive documents, then it must say so.

In response to MHTCP's objection that the documents are protected by privilege, CBM-96 states that the responses do not comply with CCP § 2031.240(b) which requires the responding party to (1) identify with particularity any document or electronically stored information falling within any category of item in the demand to which an objection is being made, and (2) set forth clearly the extent of, and the specific ground for, the objection, and under § 2031.240(c), if an objection is based on a claim of privilege or that the information is protected work product, "the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." CBM-96 states nothing in MHTCP's objection identifies which particular documents or ESI it objects to producing, nor does MHTCP provide any factual basis for withholding documents on a claim of privilege and MHTCP also failed to provide a privilege log that would allow CBM-96 to challenge, and the Court to determine, whether an asserted privilege protects specific documents or ESI from disclosure.

In response to MHTCP's objection that the request seeks premature expert discovery, CBM-96 argues that they are not seeking any material generated by an expert, nor is that a valid basis for withholding the production of responsive documents and information now.

Lastly, in response to MHTCP's statement that it has no responsive, non-privileged documents in its possession, custody, or control other than those previously produced by the parties, CBM-96 states that is inherently incredible given the work undertaken at the Project since 2022. Further, CBM-96 argues that the response is legally deficient for two reasons. First, a representation of inability to comply "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with this demand" and whether "the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." (Code Civ. Proc.§ 2031.230.) Here, MHTCP failed to affirm that it made any diligent search or reasonable inquiry in the first place.

Second, the discovery rules do not allow MHTCP to generally reference thousands of documents produced in other litigations to which CBM-96 was not even a party. CCP § 2031.210 requires a responding party to state either (1) it will comply with the particular demand for

inspection; (2) it lacks the ability to comply with the demand for inspection; or (3) it objects to the particular demand for inspection. (Code Civ. Proc. § 9 2031.210(a)) Here, CBM-96 argues that MHTCP does not state it lacks the ability to comply, but rather that it just doesn't want to. Further, CBM-96 argues that MHTCP admits that such documents exist, but refuses to identify which of the thousands of documents produced in other litigations - in which CBM-96 was not a party - are responsive to these demands.

CBM-96 argues that the Interrogatories are deficient because CCP §2030.210(a) requires a party to respond separately to each interrogatory by (1) providing an answer containing the information sought; (2) exercising its option to produce writings; or (3) objecting to the particular category and further §2030.220(a) requires that each answer to an interrogatory be as "complete and straightforward as the information reasonably available to the responding party permits" and that "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." CBM-96 argues that MHTCP objected to each of the series 7, 8, 9, 12 and 14 form interrogatories on the basis that they purportedly seek "premature disclosure of expert opinion" and "information that is equally, if not more, available to CBM-96" and that MHTCP's objections are frivolous, and its deflection does not meet MHTCP' s discovery obligations.

First, CBM-96 argues that MHCTP's responses contradict CCP §2030.010 which provides that: "An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial."

Second, CBM-96 states that MHTCP's objection that the form interrogatories seek "information that is equally, if not more, available to CBM-96" is baseless because the information sought can only be within MHTCP's possession, custody, and control. For example, there is no way for CBM-96 to know what losses MHTCP attributes to the INCIDENT, whether MHTCP repaired any damaged property that it attributes to the INCIDENT, the location of the repairs, details of the repairs, and the cost of repairs. This is especially true given MHTCP's ongoing investigation and remedial work at the Project in almost two years since the Prior Arbitration, during which time MHTCP has not produced a single document.

Sanctions

Misuses of the discovery process include "[ma]king, without substantial justification, an unmeritorious objection to discovery" and "[m]aking an evasive response to discovery." (Code Civ. Proc. § 2023.0l0(e), (t).) "To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person or attorney, and after opportunity for hearing may impose . . . sanctions against anyone engaging in conduct that is a misuse of the discovery process." (Code Civ. Proc. §

2023.030.) Moreover, the statutes governing interrogatories and inspection demands provide for monetary sanctions against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand or interrogatory, 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. §§ 2030.300(d); 2031.310(h).

CBM-96 argues that MHTCP's objections are frivolous, and the responses are evasive. CBM-96 further argues that MHTCP has refused to provide legal justification for its objections, has refused to withdraw the objections, and has refused to provide any factual information for CBM-96 to evaluate the merits of its claim of privilege or to provide a privilege log. CBM-96 requests sanctions in the amount of $4,000 - counsel's billable rate for this case is $500 per hour, preparing the motion took 6 hours, and counsel estimated and additional 2 hours for reviewing the opposition and preparing the reply.

Opposition

MHTCP argues that the Motion does not comply with CCP §2031.310, because it did not show good cause to support any of the document requests in its Motion. MHTCP argues that because of this, the Motion should be denied. However, the Motion will likely be re-filed to bring the Motion within compliance, so the Court will review it now in the interest of not wasting judicial resources.

MHTCP argues that it is only resting on one objection – that the discovery requests inappropriately seek to uncover the opinions of MHTCP's expert witnesses prior to the period for expert discovery. Code of Civil Procedure section 2034.210 authorizes a demand for exchange of expert witness information only "[a]fter the setting of the initial trial date." MHTCP argues that expert testimony is particularly appropriate on causation, and that the Interrogatories ask MHTCP to identify and categorize the damages it claims were not caused by the original design or original construction defects.

MHTCP further asserts that it should not be required to provide further responses because no lay person could be expected to be able to distinguish between damages that were an unavoidable consequence of a design or construction defect and damages caused by negligent or fraudulent failure to repair those original defects. Those matters are the province of an expert. See, e.g., *Carson*, 36 Cal.3d at 844.

MHTCP states that during the meet and confer conversations, counsel realized they had additional documents responsive to CBM-96's first set of requests, and promised to make an additional production. However, CBM-96 immediately filed the motion without any additional follow-up. MHTCP did produce those additional documents (within 30 days of the conference), so they assert that CBM-96's argument that MHTCP is withholding documents is moot.

In terms of a privilege log, MHTCP states that a privilege log would only contain communications between it and outside counsel, and MHTCP asked counsel for CBM-96 to consider the necessity of a log in light of this information but received no response. However, CBM-96 has since produced a privilege log, so MHTCP argues this issue is also moot.

MHTCP brought objections based on overbreadth and burden, but did not withhold any documents on those grounds. MHTCP believes those objections are valid but because they are not being used as the basis to withhold any documents, those objections are formally withdrawn.

In response to CBM-96's request for sanctions, MHTCP argues that they have acted with substantial justification in resisting CBM-96's premature expert discovery and that sanctions should be denied. At the conclusion of the meet and confer efforts, counsel for MHTCP states the parties agreed that Court intervention was likely inevitable on the question of whether CBM-96's discovery requests inappropriately sought expert discovery. MHTCP did supplement its production of documents to set one; MHTCP also prepared a privilege log and withdrew most of its objections prior to filing the opposition. MHTCP requested that CBM-96 withdraw its Motion, which was refused.

MHTCP now requests sanctions against CBM-96 for bringing its Motion without substantial justification. CBM-96 was not substantially justified because its Motion was not well-grounded "both in law and fact." *See Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434. First, CBM-96's Motion was not well-grounded in law because it did not comply with Section 2031.310(b)(1)'s requirement that CBM-96 making a specific showing of good cause for each document request at issue. CBM-96 also was not justified under the law because it has never cited a single case to support its argument that MHTCP be required to respond to expert discovery at this stage. It cannot show that MHTCP has withheld any documents or information related to its damages, and instead, the sole purpose of its second set of discovery is to uncover premature expert opinion discovery.

MHTCP seeks its fees and costs in opposing CBM-96's motion as sanctions in the amount of $17,750. In her declaration, counsel states she spent no less than 25 hours researching and preparing the opposition, and that her hourly rate is $710 per hour.

Reply

CBM-96 replies that it does not seek any material generated by an expert in preparation for trial, but that the form interrogatories seek facts currently known to MHTCP that would support a claim for damages attributable to anything other than original construction defects and the names and contact information of persons with knowledge of such damages. The discovery also seeks the production or identification of any documents with facts that support the existence or amount of any such damages. Additionally, the form interrogatories specifically state that the identity of experts and the disclosure of their work product are excluded. CBM-96

argues all that is requested are the facts now known to MHTCP upon which it predicates its claims for damages due to anything other than non-original construction defects, if any.

CBM-96 again points to CCP §2030.010(b) and argues that the Supreme Court has made clear long ago that "even if it be conceded that the question does call for an opinion and conclusion, that fact, of itself, is not a proper objection to an interrogatory. Such objection may be proper when the answer is intended to have probative value, but it may not be utilized on discovery as a means of preventing a party from obtaining information that will lead him to probative facts." (*W. Pico Furniture Co.*, 56 Cal.2d at 416; *see also*, *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429 and *Chodos v. Superior Court* (1963) 215 Cal.App.2d 318 (that a discovery request may touch on an area involving expert testimony has no bearing on the validity of the request). CBM-96 argues that answering the interrogatories and either identifying or producing documents in support thereof do not prejudice MHTCP in any way or prevent it from presenting subsequently discovered facts or further developing its case through the use of expert witnesses.

Lastly, CBM-96 replies that MHTCP has not produced a privilege log.

**TENTATIVE RULING #7:**

1. **MOTION IS GRANTED.**
2. **MHTCP SHALL PROVIDE FULL, COMPLETE, AND NON-EVASIVE RESPONSES TO THE REQUESTS FOR PRODUCTION OF DOCUMENTS (SET 2) AND FORM INTERROGATORIES (SET 2), AND PRODUCE ALL RESPONSIVE DOCUMENTS, BY MONDAY, NOVEMBER 25, 2024.**
3. **A PRIVILEGE LOG SHALL BE PROVIDED.**
4. **SANCTIONS IN THE AMOUNT OF $4,000 ARE ORDERED AGAINST MHTCP AND ITS COUNSEL.**

**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.**

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| **8.** | **24CV1247** | **HARGAN v. FIELDS** |
| **Motion for Trial Preference** | | |

This case is a personal injury action arising out of a motor vehicle accident. Plaintiff is 82 years old and has compromised health, such that she requests an order granting trial preference under Code of Civil Procedure §36(a). The Motion is unopposed.

**TENTATIVE RULING #8:**

1. **MOTION GRANTED.**
2. **APPEARANCES REQUIRED ON FRIDAY, OCTOBER 11, 2024, AT 8:30 AM IN DEPARTMENT NINE. PARTIES SHALL BE PREPARED TO SELECT TRIAL DATES.**

**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.**

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| **9.** | **23CV0395** | **VELLA v. PELA** |
| **Motion to Compel** | | |

At the hearing on August 16, 2024, the Court ruled on the Motion to Compel as follows:

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

The issue of sanctions was deferred, because the meet and confer efforts prior to filing the Motion seemed insufficient.

**TENTATIVE RULING #9:**

**APPEARANCES REQUIRED ON FRIDAY, OCTOBER 11, 2024, AT 8:30 AM IN DEPARTMENT NINE.**

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

**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.**

| 10. | PC20210296 | REGIONAL BUILDERS v. HALLMAN, ET AL |
|---|---|---|
| **Motion to Compel** | | |

This action involves the reconstruction by Plaintiff REGIONAL BUILDERS, INC. (hereinafter "RBI" or “Plaintiff”) of Defendant THOMAS HALLMAN's (hereinafter "Hallman" or “Defendant”) house located at 4461 Rossler Road, Placerville, CA 95667 (hereinafter the "house") after a fire. RBI claims that Hallman breached the construction contract and is seeking damages. RBI has also named LAKEVIEW LOAN SERVICING, LLC (hereinafter "Lakeview") as a defendant seeking a constructive trust over the insurance proceeds held by Lakeview. Hallman filed a cross-complaint stating causes of action for breach of contract, breach of warranty and negligent construction.

At his deposition, Hallman produced a list of over 100 items that he claims are defective or left uncompleted by RBI. At trial RBI intends to call two experts, one a construction expert and the other an engineer to testify concerning the work done by RBI and Defendant’s lengthy list of alleged defects. RBI needs to be able to have these experts view the Hallmans’ house.

Pursuant to the agreement of the parties, an inspection of the home was scheduled for September 12, 2024. On August 19, 2024, Defense counsel sent Plaintiff’s counsel an e-mail setting forth conditions for the inspection to go forward including 1) demanding to know the name of RBI's experts attending the inspection, 2) limiting the inspection to a 2 hour period, 3) limiting the number of people who could attend to 3, 4) prohibiting any representatives of RBI to attend, and 5) not allowing any photography.

Plaintiff argues: that the two RBI employees most knowledgeable about the construction on the house needed to be present at the inspection in order to help the experts understand what they were seeing; that a third RBI employee needed to be there because RBI planned to take a three-dimensional video; that Lakeview also wished to have a representative at the inspection as it is entitled to do. Defense counsel noted that Defendant objected to RBI being present because of the hard feeling engendered by the lawsuit. She also stated that the Hallmans were very concerned about disrupting their children's routines and did not want several people in the house.

Plaintiff’s counsel agreed to provide the names of those attending the inspection and for them to wear booties and masks.

It is well established that a court may limit or prohibit any discovery procedure that it finds to be “unreasonably cumulative or duplicative, or … unduly burdensome or expensive, taking into account the needs of the case …” (Code Civ. Proc., § 2019.030, subd. (a).) Although the scope of discovery is broad, it is not limitless. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223.) Discovery devices must “be used as tools to facilitate litigation rather than as weapons to wage litigation.” (*Id.* at. p. 221.) A party seeking to compel discovery must therefore “set forth specific facts justifying the discovery sought by the demand.” (Code

Civ. Proc., § 2031.310(b)(1).) To establish "good cause," the burden is on the moving party to show both relevance to the subject matter and specific facts justifying discovery. (*Glenfed Development Corp. v. Superior Court (Nat'l Union Fire Ins. Co. of Pittsburgh, Penn*.) (1997) 53 Cal.App.4th 1114, 1117.)

The Hallmans argue one son is immuno-compromised and recovering from an infection, and the other son suffers from extreme and debilitating anxiety among and around strangers. They also argue all three children follow an asynchronous class schedule from school and at home; however, the Court notes that this means they can take their classes at any time, as opposed to a synchronous schedule. Also of note is that the children are 18-year-old twins and a 20-year-old daughter.

**TENTATIVE RULING #10:**

1. **MOTION IS GRANTED, BUT PLAINTIFF IS LIMITED TO SENDING FOUR INDIVIDUALS INTO THE HOME AT A TIME. THE INSPECTION IS LIMITED TO THREE HOURS. INDIVIDUALS ENTERING THE HOME SHALL WEAR MASKS AND BOOTIES AND SANITIZE THEIR HANDS OR AVOID TOUCHING ANY SURFACES.**
2. **SANCTIONS DENIED AS THE COURT FINDS THE MEET AND CONFER EFFORTS WERE EXTENSIVE AND THAT THERE WAS SUBSTANTIAL JUSTIFICATION FOR BRINGING THE MOTION DUE TO AN INABILITY FOR THE PARTIES TO AGREE.**

**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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**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.**