November 1, 2024
Dept. 9
Tentative Rulings

1.	24CV0862	PALMATARY v. NATURAL KAOS, LLC
Demurrer		

Natural Kaos, LLC, Kim Pratt, and Jason Pratt (collectively "Defendants") demurrer to each cause of action in the Complaint of Plaintiff Dorothy Palmatary ("Plaintiff"). The Complaint includes 12 causes of action: (1) Misclassification of Employment Status, (2) Failure to Pay Wages Due, (3) Failure to Pay Overtime Compensation, (4) Failure to Provide Meal and Rest Breaks, (5) Failure to Provide Accurate and Itemized Wage Statements, (6) Waiting Time Penalties, (7) Violation of Business and Professions Code §17200, et seq., (8) Wrongful Termination in Violation of Public Policy, (9) Possession of Stolen Property, (10) Fraud, (11) Negligent Misrepresentation and (12) Breach of Covenant of Good Faith and Fair Dealing.

Standard of Review – Demurrer

Defendant generally demurrers to each of the 12 causes of action on the grounds that the causes are uncertain, ambiguous, and unintelligible, and specifically demurs to all causes of action on the grounds that the causes of action do not state facts sufficient to constitute a cause of action.

Code of Civil Procedure section 430.10, subdivision (e), provides that the party against whom a complaint is filed may object, by demurrer, to the pleading on the ground that "the pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) However, the grounds for a demurrer must appear on the face of the challenged pleading or from any matter of which the Court is required or permitted to take judicial notice. (Id., § 430.30.)

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

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(1), 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)."

Defendants request that the Court take judicial notice of Plaintiff's Complaint and the Independent Contractor Agreement between Defendants and Plaintiff.

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").

Defense counsel's declaration outlines their efforts to meet and confer with Plaintiff's counsel, to which they received no response. There is no declaration from Plaintiff's counsel that contradicts this. The Court finds Defendant's meet and confer efforts to be sufficient.

Factual Background

Plaintiff filed her Complaint on April 26, 2024. (See Request for Judicial Notice filed concurrently herewith ("RJN"), Ex. A, Complaint.) In the Complaint, Plaintiff acknowledges she is a resident of Delaware. (*Id.*, ¶ 1.) The Complaint alleges that Plaintiff's work was governed by an Independent Contractor Agreement executed in June 2020. (*Id.*, at ¶ 10.) This Independent Contractor Agreement further confirms that Plaintiff resided in Delaware when she executed the Agreement (RJN, Ex. B, Independent Contractor Agreement, p. 9.)

Argument

First through Eighth Causes of Action

Defendant argues that eight of Plaintiff's causes of action[1] are based on or derived from alleged violations of California Labor Code or other California statutes, and that those causes all fail because the underlying statutes do not apply extraterritorially.

Defendants argue there is a general presumption that a state's statutes are inapplicable to activity beyond that state's borders. (*North Alaska Salmon Co. v. Pillsbury* (1916) 174 Cal. 1, 4 ["Ordinarily the statutes of a state have no force beyond its boundaries . . .."].) Defendants argue that it is well established that this principle applies to claims brought under the California Labor Code. (*Cotter v. Lyft, Inc.* (N.D. Cal. 2014) 60 F.Supp.3d 1059, 1063 [California wage and hour laws did not create a cause of action for out-of state Lyft drivers, "even if they work for a California-based company that makes all employment related decisions in California."]; *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 760–76 [test for extraterritorial application of Labor Code is generally "if the employee works a majority of the time in California or, for interstate transportation workers whose work is not primarily performed in any single state, if the worker has his or her base of work operations in California."]; *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056 [acknowledging Labor Code section 226 inapplicable to employees performing work out-of-state].)

Defendant further argues that even where a contract includes a choice of law provision that attempts to confer upon out-of-state individuals a cause of action for violation of California's wage and hour laws, it cannot do so. Any remedy would be under a contractual theory rather than a statutory theory. (*Cotter v. Lyft, Inc., supra*, 60 F.Supp.3d at p. 1065.

Defendant next argues that because the Labor Code does not apply extraterritorially, derivative claims under the Unfair Competition Law ("UCL") or for wrongful termination also fail

[1] The following causes of action are based on or derived from California statutes: (1) Misclassification of Employment Status, (2) Failure to Pay Wages Due, (3) Failure to Pay Overtime Compensation, (4) Failure to Provide Meal and Rest Breaks, (5) Failure to Provide Accurate and Itemized Wage Statements, (6) Waiting Time Penalties, (7) Violation of Business and Professions Code §17200, et seq., and (8) Wrongful Termination in Violation of Public Policy. They are the first through eighth causes.

as a matter of law if based on out of-state work. (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1209 ["Business and Professions Code section 17200 does not apply to overtime work performed outside California for a California based employer by out-of-state plaintiffs"]; *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 989, 1007 ["The Court concludes that the UCL does not apply to work performed outside California by out-of-state Plaintiffs."]; *Paparella v. Plume Design, Inc.* (N.D. Cal., July 25, 2022, No. 22-CV-01295-WHO) 2022 WL 2915706, at 7 ["To the extent that the 'Wrongful Termination (Common Law)' claim is tied to a violation of the California Labor Code…then this claim must be dismissed because Paparella did not work a majority of his time in California."].)

Defendant offers additional reasons for why the causes of action fail.

Plaintiff responds, arguing that California law applies to this case because of the choice of law provision in the contract, the substantial connection to California, and because California has a strong public policy interest in regulating work performed for its companies. In terms of the choice of law provision, the Agreement between Plaintiff and Defendants states that: "The laws of the State of California, without reference to conflict of law provisions, will govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto." (See Request for Judicial Notice § 13(b).) Plaintiff argues that California courts generally enforce contractual choice-of-law provisions. (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 464-465.) The fact that the underlying agreement may be invalid as an independent contractor agreement does not negate the choice of law provision. (Civ. Code, § 1599 [contract provisions are severable].)

Regarding Plaintiff's claim for misclassification (first cause of action), Plaintiff argues it is not only grounded in Labor Code §226.8, but also on a "broader statutory scheme" including other Labor Code sections. Plaintiff admits that courts have generally held that Labor Code §226.8 does not provide a private right of action but argues that Plaintiff's claim still stands because it's based on a broader statutory scheme including Labor Code §2775 and the factors listed in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. All of this, Plaintiff argues, establishes clear public policy against misclassifying employees.

Plaintiff further argues that the claim for unfair competition (eighth cause of action) is derivative of the Labor Code and that the Unfair Competition Law ("UCL") can apply to out-of-state plaintiffs where there is a sufficient nexus to California. Plaintiff cites to *Norwest Mortgage, Inc. v. Superior Court* (1999) 72 Cal.App.4th 214, where the court held that application of California law to claims of nonresidents for out of state activities would be arbitrary and unfair and transgress due process limitations. Plaintiff argues that Defendants' actions fall under the UCL's unlawful prong, unfair prong, and fraudulent prong.

Plaintiff argues that the UCL applies to out-of-state plaintiffs when there is a sufficient nexus to California, again citing to *Norwest.* This Court is not persuaded by *Norwest* considering

the case law provided in the Demurrer. For Plaintiff's wage and hour claims (second through seventh causes of action), Plaintiff argues they should be allowed to move forward based on the application of California law.

As cited by Defendants, in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 989, 1005, "a contractual choice of law provision that incorporates California law presumably incorporates all of California law—including California's presumption against extraterritorial application of its law." Further, Plaintiff argues that there is a substantial connection between Plaintiff's claims and California but does not cite any authority for the proposition that "substantial connections" (such as a defendant's principal place of business) provide a basis to apply the Labor Code extraterritorially. To the contrary, Defendants argue that courts have held a defendant's principal place of business is legally immaterial if a plaintiff's work occurs out-of-state. (*Cotter v. Lyft, Inc.* (N.D. Cal. 2014) 60 F.Supp.3d 1059, 1061 ["regardless of the connection between Lyft and California, Lyft drivers who worked in other states cannot bring claims under California's wage and hour statutes."]. Lastly, while Plaintiff argues that public policy favors applying California law extraterritorially, the cases detailed in the moving papers provide numerous public policy reasons why there is a presumption against extraterritoriality, ranging from considerations of judicial resources to respect for other states' sovereignty. Plaintiff provides no authority to overturn the century old precedent. (See *North Alaska Salmon Co. v. Pillsbury* (1916) 174 Cal. 1, 4.

Demurrer as to the first through eighth causes of actions is sustained, without leave to amend.

Ninth Cause of Action

The Complaint asserts that Plaintiff's misclassification claim, and derivative wage and hour causes of action, additionally support a claim for possession of stolen property under Penal Code section 496. (RJN, Ex. A, ¶¶ 62-64.) Defendant argues that courts have consistently rejected Plaintiff's theory because claims for alleged nonpayment of wages do not fall within the scope of Penal Code section 496 as a matter of law. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1156 ["a claim for unpaid wages resembles other actions for a particular amount of money owed in exchange for contractual performance—a type of claim that has long been understood to sound in contract, rather than as the tort of conversion*."]; Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 967 ["Lacagnina makes the novel claim that he is entitled to recover treble damages and attorneys' fees under that statute, which makes it a crime to receive stolen property, because Comprehend and its executives engaged in the 'theft' or 'receipt' of 'stolen property,' in the form of his labor. We are not persuaded." (emphasis added)]; see also *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 353.

Plaintiff responds, arguing that Defendants' reliance on *Siry* is misplaced and that the Supreme Court in *Siry* held that Penal Code §496 can apply to business disputes if the plaintiff

can show the proper level of intent from the defendant. *Siry*, *supra*, 13 Cal.5that 362. Plaintiff argues that she can show Defendants' intent, along with their "careful planning and deliberation reflecting the requisite criminal intent." *Id.* The Court does not find that Plaintiff has sufficiently pled facts to show the requisite intent by Defendants.

The Supreme Court in *Siry* held that the plaintiff needed to establish criminal intent by Defendant and not just proof of non-performance or actual falsity and in that case, they found that the defendants acted with careful planning and deliberation. *Siry, supra*, 13 Cal.5th 362. As stated in Defendants' reply, the Court finds that *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1156 and *Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 967 are more applicable to the facts at hand than *Siry.* In *Voris*, the Supreme Court reaffirmed the public policy favoring full and prompt payment of an employee's earned wages but declined to expand conversion to include wages. *Voris, supra,* 7 Cal.5th 1157.

The Demurrer is sustained as to the ninth cause of action, with leave to amend, since Plaintiff argues she has sufficient facts to show Defendants' intent.

Tenth and Eleventh Causes of Action

Defendant asserts that fraud and negligent misrepresentation claims must be pleaded with specificity rather than with "general and conclusory allegations." (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184.) The specificity requirement means a plaintiff must allege facts showing "how, when, where, to whom, and by what means" the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Here, Defendants argue that Plaintiff's Complaint only vaguely alleges Defendants made unspecified "representations, concealments, and/or non-disclosures to Plaintiff…in connection with offering Plaintiff compensation in the form of a share in the membership fees." (RJN, Ex. A, ¶¶ 66 & 70.) Defendants argue that this falls far short of the "how, when, where, to whom, and by what means" level of specificity discussed above. Defendants further argue that Plaintiff's Complaint seeks to recover damages that are not recoverable as a matter of law under a fraud or negligent misrepresentation theory because Plaintiff claims Defendants caused her to "forbear her compensation" under an alleged contract providing a share of Defendant's membership fees in connection with Plaintiff's services. (RJN, Ex. A, ¶¶ 66 & 70.) It is Defendants' position that while a party may recover out-of-pocket losses under a fraud of negligent misrepresentation theory, a Plaintiff cannot convert a fraud theory into a contractual claim to recover alleged bargained-for compensation or wages. (*Kenly v. Ukegawa* (1993) 16 Cal.App.4th 49, 54 ["defrauded party may recoup his out-of-pocket losses and expenditures in reliance on the fraud, but he may not recover benefit-of-the-bargain damages (i.e., damages

placing him in the economic position he would have occupied had the representation been true).”]; see also *Lazar v. Superior Court, supra*, 12 Cal.4th at p. 646 [compiling cases discussing the distinction between tort and contract damages and affirming that tort damages should not be judicially extended in order to “fashion remedies for breach of a contract provision.”].

Plaintiff responds, arguing that Plaintiff’s fraud and negligent misrepresentation claims are pleaded with enough specificity, citing to Defendants representations regarding Plaintiff’s compensation, including a share of membership fees. (Complaint, ¶¶ 66, 70).

The Court agrees with Defendants that Plaintiff’s claims for fraud and negligent misrepresentation are not pled with enough specificity, in reviewing paragraphs 66 and 70 of the Complaint. The Demurrer is sustained for the tenth and eleventh causes of action.

Twelfth Cause of Action

Defendants argue that Plaintiff’s twelfth cause of action for breach of the covenant of good faith and fair dealing is entirely derivative of her eighth cause of action for wrongful termination and therefore, also must fail. (RJN, Ex. A, ¶ 76 [“Defendants unfairly interfered with and frustrated Plaintiff’s right to receive the benefits of these agreements by wrongfully terminating Plaintiff’s employment.”].) As discussed above, Defendant argues that Plaintiff’s wrongful termination claim fails as a matter of law for two reasons: (1) it is premised on alleged Labor Code violations, but the Labor Code does not apply extraterritorially; and (2) the doctrine of constructive discharge is inapplicable to disputes for unpaid wages. (*Rochlis v. Walt Disney Co., supra*, 19 Cal.App.4th at p. 215 [“[The] mere failure of the [employer] to pay wages to the [employee] does not amount to a discharge.”].)

Defendants argue that absent an underlying violation of the Labor Code or any viable theory that such violations could support a constructive discharge claim, Plaintiff’s twelfth cause of action amounts to nothing more than a claimed right to continue working under her independent contract agreement with Defendants. Defendants argue there is a statutory presumption of at-will status in California pursuant to Labor Code section 2922 and that Defendants’ termination of Plaintiff’s independent contractor agreement therefore cannot, in and of itself, constitute a violation of the covenant of good faith and fair dealing as a matter of law. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 350 [“Precisely because employment at will allows the employer freedom to terminate the relationship as it chooses, the employer does not frustrate the employee's contractual rights merely by doing so.”].)

Plaintiff responds, arguing that this claim is based on Defendants’ conduct throughout the employment relationship, and not just at termination. However, as Defendants point out in their reply, Plaintiff is arguing that Defendants breached an independent contractor agreement, by treating Plaintiff as an independent contractor. (See Complaint, ¶ 10 [acknowledging the subject agreement is an “Independent Contractor Agreement”].) Defendants argue that they cannot be deemed to have acted in bad faith under the independent contractor agreement

when Defendants performed their duties consistent with the independent contractor agreement's express terms and with California's presumption against extraterritorial application of the Labor Code, and the Court agrees.

While the court finds the facts pled are insufficient to constitute this cause of action, recognizing the liberal policy of granting leave to amend, the court finds that Plaintiff may be able to add facts that allow Plaintiff to maintain this cause of action.

Demurrer sustained as to the twelfth cause of action, with leave to amend.

Leave to Amend

If the demurrer is sustained, Plaintiff seeks leave to amend, to include additional causes of action for wrongful termination in violation of public policy, and declaratory relief, and to amend her existing causes of action.

Defendants reply, arguing that the burden is Plaintiff's to demonstrate the specific manner in which the complaint might be amended to cure the deficiencies detailed above. (*PGA West Residential Assn., Inc. v. Hulven Internat., Inc.* (2017) 14 Cal.App.5th 156, 189.) Plaintiff must offer specific facts, not vague statements or conclusions of law. (*Ibid*.; see also *Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 193.)

In response to Plaintiff's request to amend the Complaint to add a new wrongful termination claim, Defendants argue that the proposed amendment fails to address the caselaw cited in the Demurrer, which essentially hold that a wrongful termination claim fails if it is predicated on out-of-state application of underlying Labor Code violations. Defendants further assert that if Plaintiff claims she was terminated in retaliation for complaining about misclassification, that claim still fails because she has not alleged any instance prior to her termination where she disputed her classification, and because the Labor Code's anti-retaliation provisions do not apply extraterritorially. (*Wood v. iGATE Technologies, Inc*. (N.D. Cal., June 30, 2016, No. C 15-00799 JSW) 2016 WL 3548410, at *6 ["because there is apparently no dispute of fact that Plaintiff was not a California wage earner, notwithstanding the choice of law provision in her employment contract, the California Labor Code does not provide a cause of action for wrongful termination in violation of public policy under California Labor Code section 200 et seq. or for retaliation under California Labor Code section 98.6."].)

In response to Plaintiff's request to amend the Complaint to add a claim for declaratory relief, Defendants argue that the legal questions posed by a declaratory relief claim – namely, the applicability of California labor laws to Plaintiff's employment, despite her physical location in Delaware – are the same legal questions that Defendants are asking the Court to resolve in this Demurrer.

Lastly, in response to Plaintiff's request to plead additional facts to support her existing claims, Defendant argues that regardless of Plaintiff's changes to include Labor Code §2775 in addition to §226.8, she is still seeking to bring her misclassification claim under the Labor Code, which they argue does not apply extraterritorially. In adding additional facts to allege that Defendants exercised significant control over Plaintiff's employment, Defendant argues that would still not be sufficient to rebut the presumption against extraterritorial application of the Labor Code. (*Cotter v. Lyft, Inc., supra*, 60 F.Supp.3d at p. 1061 ["regardless of the connection between Lyft and California, Lyft drivers who worked in other states cannot bring claims under California's wage and hour statutes."].) Finally, in response to Plaintiff's request to provide more specific allegations regarding the fraudulent and negligent misrepresentations made by Defendants, Defendants argue is too vague and insufficient to warrant leave to amend. (*Major Clients Agency v. Diemer* (1998) 67 Cal.App.4th 1116, 1133; *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 749 ["plaintiff has not apprised the court of any new information that would contribute to meaningful amendments, and his generalized assertion that his complaint can be amended…does not suffice to meet his burden of demonstrating that he can plead each element of the cause of action."].)

TENTATIVE RULING #1:

1. **DEMURRER IS SUSTAINED FOR THE FIRST THROUGH EIGHTH CAUSES OF ACTION, WITHOUT LEAVE TO AMEND.**
2. **DEMURRER IS SUSTAINED FOR THE NINTH, TENTH, ELEVENTH, AND TWELFTH CAUSES OF ACTION, WITH LEAVE TO AMEND.**
3. **LEAVE TO AMEND TO ADD NEW CLAIMS FOR WRONGFUL TERMINATION AND DECLARATORY RELIEF IS DENIED, AS CALIFORNIA LABOR LAWS DO NOT APPLY IN THIS CASE.**

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

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

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

ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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

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

Defendants Jaskaran Gill and Baljit Gill ("Defendants") bring this Motion to Enforce the Settlement ("Motion"). At the mandatory settlement conference ("MSC") on April 3, 2024, the parties agreed that Garkaran Gill ("Defendant") would pay Harjeet Randhawa and Karamjit Singh (collectively "Plaintiffs") $590,000.00 over a certain time.

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 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."

California Code of Civil Procedure §664.6:

> (a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, 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.

At the time of the MSC, the Minute Order reflects that the Court retained jurisdiction over this settlement agreement until executed fully. The settlement has not been executed, and therefore, the Court has grounds to enforce the settlement.

TENTATIVE RULING #2:

MOTION GRANTED. COMPLIANCE HEARING SET FOR FRIDAY, DECEMBER 20, 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.

3.	**PC20210238**	**AKIN, TRUSTEE v. MARCHINI**
Motion for Attorney's Fees		

On October 11, 2024, the court delivered its oral decision on the record. At that time, Plaintiff indicated that he may wish to request a Statement of Decision. On October 21, 2024, Plaintiff timely filed his request for a Statement of Decision. On October 17, 2024, Defendant filed a motion for attorney's fees and costs. Plaintiff responded that the motion is premature as the court still needs to complete its Statement of Decision. Plaintiff provided no substantive response to the merits of the motion. Thereafter, Defendant withdrew his request for costs, agreeing that such request was premature, but maintained that the attorney's fees request can be adjudicated by the court.

The court uses its discretion to continue the motion for attorney's fees to allow the court to first complete its Statement of Decision finding that the analysis conducted in connection with its preparation may assist the court in adjudicating the attorney's fees request. The court finds that the request for costs has been withdrawn; therefore, if Plaintiff wishes to make this request in the future, he can follow the appropriate rules once that request is ripe for determination.

Separately, the court notes that the motion for attorney's fees was not calendared per the timelines as set forth in the Code of Civil Procedure and therefore did not provide Plaintiff with sufficient time per the code to review and respond to the motion on its merits (nor would it have given the court sufficient time to review and adjudicate the motion had a substantive response been filed). This would form an additional basis for continuing the matter.

Nonetheless, the court's primary concern is its need to resolve the Statement of Decision first. Given the court's competing workload needs which impact its timeline on completing the Statement of Decision, the court continues the matter to January 10, 2025 at 8:30 a.m. in Department 9. Plaintiff is ordered to file and serve any response as to the attorney's fees motion that it wishes the court to consider by December 20, 2024.

TENTATIVE RULING #3:

HEARING CONTINUED TO JANUARY 10, 2025 AT 8:30 A.M. IN DEPARTMENT NINE.

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

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

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

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