1.	**22CV1328**	**5059 GREYSON CREEK DRIVE, LLC v. PERSEVERE LENDING**
Motion to be Relieved		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362. A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client has breached the terms of the engagement agreement by failing to pay outstanding attorneys' fees and there has been a breakdown I communication.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Plaintiff at their last known address and on counsel for Defendants was filed on October 31, 2024.

A Case Management Conference is currently scheduled on November 19, 2024, and the date is listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #1:

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

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

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

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

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

2.	**24CV0263**	**CITIBANK, N.A. v. HUNTER**
Motion to Set Aside		

Defendant, Christina Hunter, moves the Court pursuant to Code of Civil Procedure §473 for an order setting aside the default entered on September 24, 2024, and vacating the default judgment entered on October 2, 2024. Defendant requests an order allowing her to file an Answer, which is attached to the Motion. Defendant states she calculated the time for her response incorrectly, and did speak with counsel for the Plaintiff.

> [B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite* v. *Southern Pacific Co*. (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

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

California Code, Code of Civil Procedure - CCP § 473

> (b) The court may, upon any terms as may be just, **relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect**. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, **in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken**. . . . . No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. . . .

> (c)(1) **Whenever the court grants relief from a default, default judgment,** or dismissal based on any of the provisions of this section, **the court may do any of the following**:
>
> > (A) Impose a penalty of no greater than one thousand dollars ($1,000) upon an offending attorney or party.
> >
> > (B) Direct that an offending attorney pay an amount no greater than one thousand dollars ($1,000) to the State Bar Client Security Fund.
> >
> > (C) Grant other relief as is appropriate.
>
> (2) However, **where the court grants relief from a default or default judgment pursuant to this section based upon the affidavit of the defaulting party's attorney attesting to the attorney's mistake, inadvertence, surprise, or neglect**, the relief shall not be made conditional upon the attorney's payment of compensatory legal fees or costs or monetary penalties imposed by the court or upon compliance with other sanctions ordered by the court.

There is no proof of service filed with the Motion, indicating whether Plaintiffs are aware of the filing.

TENTATIVE RULING #2:

HEARING CONTINUED TO 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.	22CV1608	CRAMER v. NORTON
Motion for Sanctions		

Plaintiff David Cramer ("Cramer" or "Plaintiff") brings this Motion for Sanctions ("Motion") pursuant to California Code of Civil Procedure ("CCP") §§ 128.5, and 128-130. Plaintiff prays for a default judgment against Defendants Miche Rene Norton ("Norton") and First American Title Company ("First American") (collectively "Defendants"), for an order against First American to move Norton's driveway and move Plaintiff's fence and grant sanctions to Plaintiff in the amount of $50 per day "for deliberately delaying this matter from the date each party answered the Complaint."

Plaintiff also filed an Objection to the Court's granting of First American's ex parte request to vacate the trial date and set a new case management conference, and the Court's denial to grant default judgment.

First American opposes the Motion and Objection filed by Cramer, and in turn requests that the Court issue *sua sponte* sanctions against Cramer to discourage him from more frivolous filings. Norton also opposes the Motion for several reasons and requests that sanctions be ordered against Cramer.

First American argues several grounds for denying the Motion, the first of which is that they were not served with sufficient notice as required by CCP §1005(b). As required by CCP §1005(b), Cramer needed to serve the motion 16 court days prior to the hearing with an additional 5 calendar days if served by mail. Accordingly, with a November 15, 2024, hearing date, the deadline to serve the Motion was October 18, 2024. Here, the proof of service attests that the Motion was served by mail on October 22, 2024. However, First American did not receive the documents until October 30, 2024, and Norton did not receive them until October 29, 2024. Norton also points out that the Notice fails to comply with California Rules of Court ("CRC") 3.1110(b) in that it does not identify the hearing date, location, and time. Norton argues, nor does the notice identify the alleged deliberate delay and frivolous answers as required by CCP §1010 and CRC 3.110(a). <u>The Court agrees that the motion was not served with sufficient notice pursuant to CCP §1005(b) and does not comply with CCP §1010 and CRC 3.1110(a).</u>

Next, First American argues that the Motion and supporting papers do not identify nor provide any evidence of sanctionable conduct under §128.5. First American argues that Cramer's declaration includes a series of conclusory and unsubstantiated allegations, and that the Points and Authorities seem to argue the merits of the underlying case, evidenced further by the relief sought. Norton argues that Cramer fails to identify the specific frivolous answers and deliberate delay that he claims warrant sanctions.

Third, First American argues that it has not engaged in any delay, let alone deliberate delay, but has acted diligently.

Fourth, First American argues it has not filed any frivolous Answers, and in fact, First American has not yet filed an Answer to the First Amended Complaint. It has only filed a demurrer and motion to strike. Lastly, First American responds to Cramer's allegation that counsel committed perjury in his declaration, arguing that Cramer sent his email offering to meet and confer after the declaration had already been filed.

First American also requests that Cramer's Objections be overruled, as they do not articulate a valid objection and instead appear to be an airing of grievances by Cramer. Norton also requests that Cramer's Objections be overruled on the grounds that Cramer has not properly procedurally brought any such objection nor provided any substantive legal basis for such objection. The Court agrees.

Finally, First American requests that the Court sanction Cramer under §128.5 for his frivolous motions. CCP §128.5 provides for sanctions that may consist of "directives of a nonmonetary nature," "an order to pay a penalty into court," or directing payment of the opposing side's attorneys' fees. CCP §128.5(f)(2). As argued by First American, Cramer's Motion and Objection are frivolous, lack factual and legal merit, are incoherent, waste time/resources/money of the parties and the Court, and include unfounded and reckless accusations of criminal felony conduct by the parties, counsel, and the Court. (Cramer Dec. ¶¶9-10) Norton also requests that the Court, on its own motion, impose sanctions against Cramer.

CCP § 128.5 requires that before a party is sanctioned the party must be given notice and an opportunity to be heard. The court therefore finds it would be improper to issue sanctions at the November 15, 2024 hearing. However, the court agrees that Plaintiff's motion and objection lack merit and the allegations are not supported by specific facts beyond conclusory statements. On its own motion, the court sets a hearing on January 17, 2025 at 8:30 a.m. in Department 9, when the parties are next set to be in court regarding a demurrer, for the court to determine whether sanctions under CCP § 128.5 are appropriate for filing a motion and objection which the court may deem to be frivolous. The standard deadlines under the CCP for a responsive declaration from Plaintiff and any replies, if appropriate, from Defendants shall apply.

TENTATIVE RULING #3:

1. **MOTION IS DENIED.**
2. **OBJECTION IS OVERRULED.**
3. **THE COURT SETS A HEARING ON JANUARY 17, 2025 AT 8:30 A.M. IN DEPARTMENT NINE FOR THE COURT TO DETERMINE WHETHER SANCTIONS UNDER CCP § 128.5 ARE APPROPRIATE FOR FILING A MOTION AND OBJECTION WHICH THE COURT MAY DEEM TO BE FRIVOLOUS.**

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.

4.	**PCL20170038**	**LOBEL FINANCIAL CORP v. ELIAS**
Claim of Exemption		

TENTATIVE RULING #4:

APPEARANCES REQUIRED ON FRIDAY, NOVEMBER 15, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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

5.	**24CV0958**	**PETERSON v. FORD MOTOR COMPANY, ET AL**
Motion to Compel		

Plaintiff brings this Motion to Compel Further Responses to Plaintiffs' Request for Production of Documents. The Notice does not comply with Local Rule 7.10.05.

This case involves a warranty contract that Plaintiff entered into with Defendant regarding a 2019 Ford Edge. Plaintiff argues they made good faith efforts to meet and confer but that Defendant stands by its objections. Plaintiff seeks an order striking Defendant's alleged meritless objections and compelling further responses and documents.

Defendant opposes, arguing that Plaintiff's Motion is untimely, and that Plaintiff's counsel failed to engage in good faith meet and confer efforts.

TENTATIVE RULING #5:

APPEARANCES REQUIRED ON FRIDAY, NOVEMBER 15, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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

6.	24CV0532	VILT v. POLSTON
Judgment on the Pleadings		

This matter involves partition of a piece of real property located in El Dorado County, owned by the parties as tenants-in-common. Plaintiff seeks a court-ordered private sale of the property and brings this Motion for Judgment on the Pleadings, seeking the entry of an interlocutory order and appointment of a referee to sell the property.

Meet and Confer

> "(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. (Code of Civil Procedure, § 439(a))
>
> "A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Code of Civil Procedure, §439(a)(4))

While the Court notes that the Kim Declaration only mentions one letter sent as a meet and confer effort, and no telephone or in-person efforts, pursuant to CCP §439(a)(4), the Court will still address the Motion.

Request for Judicial Notice

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

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)

Pursuant to Evidence Code §452(d)(1), Plaintiff's request for judicial notice is granted.

Judgment on the Pleadings Standard

"(c)(1) The motion provided for in this section may only be made on one of the following grounds: ¶ (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint…." (Code of Civil Procedure, § 438(c)(1)(A).)

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Code of Civil Procedure, § 438(d).)

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (*Sykora v. State Department of State Hospitals (*2014) 225 Cal.App.4th 1530, 1534.)

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)" (*Allstate Ins. Co. v. Kim W. (*1984) 160 Cal.App.3d 326, 330-331.) However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. (See *Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 200.)

"It is true that a court may take judicial notice of a party's admissions or concessions, but only in cases where the admission "cannot reasonably be controverted," such as in answers to interrogatories or requests for admission, or in affidavits and declarations filed on the party's behalf. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989–990, 94 Cal.Rptr.2d 643; see also *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604–605, 176 Cal.Rptr. 824 ["The court will take judicial notice of records such as admissions, answers to

interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court."].)" (*Arce v. Kaiser Foundation Health Plan, Inc. (*2010) 181 Cal.App.4th 471, 485.)

Argument

On July 26, 2024, the court granted Plaintiff's motion to deem admitted requests for admission propounded upon Defendant. The following facts are deemed admitted by Defendant and, therefore, cannot reasonably be controverted: that Plaintiffs have a right to judgment in their favor against the Defendant for Partition; that Plaintiffs are rightful owners of the Property; that Plaintiffs have a right to partition the Property; that the Property should be sold through partition by private sale; that partitioning the Property in kind is not equitable; that the Court should appoint a partition referee to market and sell the Property; and that Defendant lacks any defenses to the Complaint.

Plaintiff argues that the Plaintiff has a right to judgment on the pleadings because this Court has deemed that the Defendant admitted that (1) the Plaintiff has a right to judgment in their favor against the Defendant for partition, which is the Complaint's sole cause of action; and (2) the Defendant lacks any defenses. (See *Saltarelli,* 40 Cal.App.4th at 5; *Columbia,* 231 Cal.App.3d at 468; *Arce*, 181 Cal.App.4th at 485; *Pang*, 79 Cal.App.4th at 989-990; *Del Webb*, 123 Cal.App.3d at 604-605.) Motion is granted.

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225), but the burden of demonstrating such an abuse of discretion is on the appellant. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349)" (*Atlas Assurance Co. v. McCombs Corp.* (1983) 146 Cal.App.3d 135, 149.) Due to the admissions, amendment of the pleadings is not feasible.

Interlocutory Judgment

Code of Civil Procedure section 872.720 states, "[A] If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that [B] determines the interests of the parties in the property and orders the partition of the property, and unless it is to be later determined, the manner of partition."

Code of Civil Procedure section 872.710, subdivision (a), states "A partition action may be commenced and maintained by any…owner of…such property." Section 872.710, subdivision (b), states that "partition as to concurrent interests in the property shall be as of right unless barred by a valid waiver." "Ordinarily, if the party seeking partition is shown to be a tenant in common, and as such entitled to the possession of the land sought to be partitioned, the right to partition is absolute, and cannot be denied, 'either because of any supposed difficulty, nor on the

suggestion that the interest of the co-tenants will be promoted by refusing the application nor temporarily postponing the action." (*Priddel v. Shankie* (1945) 69 Cal.App.2d 319, 325.

In this case, Plaintiff and Defendant acquired the property as tenants-in-common through a Certified Court Order for Distribution of Real Property. (RJN, Ex. 1-B; see also RJN, Ex. 2-3). Plaintiff therefore argues that as a title owner of record and tenant-in-common, the law presumes ownership of the property and therefore the Court may determine that Plaintiff has a right to partition. As tenants-in-common, with no other owners of record, Plaintiff and Defendant are each ½ owner of the property.

In general, a court may order the partition of real property by one of two methods. First, a court may order partition in kind, physically dividing the property. (CCP § 872.810.) Second, a court may order a partition by sale when it would be more equitable than division of the property in kind (i.e., a physical division). (CCP § 872.820.) A partition by sale is proper when (1) a division into sub-parcels of equal value cannot be made, or (2) a division of the land would substantially diminish the value of each party's interest, such that the portion received by each co-tenant would be of substantially less value than the cash received on a sale. (*East Shore Co. v. Richmond Belt Ry.* (1916) 172 Cal. 174, 180; *Sting v. Beckham* (1949) 94 Cal.App.2d 823, 824.)

In this case, the property is a single-family home, so physical division is impossible and impractical. (RJN, Ex. 1-3) Additionally, based on the Deemed Admitted Order, it is undisputed that physical division would be costly and substantially diminish the value of the parties' interests in the property. (RJN, Ex. 2-3) Partition by sale is more equitable than an order for physical partition in kind.

Lastly, Plaintiff points to Code of Civil Procedure §873.010 which provides that this Court "shall appoint a referee to divide or sell the Property as ordered by the court." Similarly, §873.020 states that "the court in its discretion may appoint a referee for sale and a referee for division or may appoint a single referee for both." Further, the Court may, among other things: (1) "[d]etermine whether a referee's bond is necessary and fix the amount of the bond"; (2) "instruct the referee"; and (3) "fix the reasonable compensation for the services of the referee and provide for payment of the referee's reasonable expenses." (Cal. Code of Civ. Proc. §873.010(b).) Here, Plaintiff argues that Kyle Renke is highly qualified and able to market and sell the Property, and he is familiar with residential real estate in the greater Sacramento County. (Renke Dec., ¶ 1, 10.) The Plaintiff does not believe there is a need for a referee's bond given Mr. Renke's reputation. (*Id.*)

TENTATIVE RULING #6:

1. **MOTION FOR JUDGMENT ON THE PLEADINGS GRANTED WITHOUT LEAVE TO AMEND.**
2. **PLAINTIFF HAS A RIGHT TO PARTITION. THE COURT ORDERS PARTITION BY SALE, WITH KYLE RENKE APPOINTED AS REFEREE.**

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.	23CV1965	QUALITY LOAN SERVICE CORP v. ALL CLAIMANTS
Claim of Surplus Funds		

The Court notes that the Notice of Hearing does not comply with Local Rule 7.10.05.

The court was advised by the trustee of the deed of trust who sold certain real property at a trustee's foreclosure sale on July 19, 2023, that there remained to be distributed to several potential claimants the amount of $158,256.49 in surplus funds remaining from the sale proceeds after deducting trustee fees, expenses, and the court filing fee. The surplus funds remaining after the sale were deposited with the court pursuant to the provisions of Code of Civil Procedure, § 2924j(c) due to the potential multiple claims to the surplus funds.

The proof of service for this initial Petition in the court's file indicates that the potential claimants known to the trustee were served the notice of hearing by mail on November 22, 2023. The Petition and Order did not request that a subsequent hearing be set within 90 days to address any claims filed, and the notice does not specifically advise those potential claimants that their claims were required by Section 2924j(d) to be filed at least 15 days prior to the hearing date in order for the claims to be considered. The potential claimants were also served with Notice of the Court's Ruling, with that proof of service being filed on January 18, 2024.

"The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority: ¶ (1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section. ¶ (2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale. ¶ (3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority. ¶ (4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale." (Civil Code, § 2924k(a).)

On October 18, 2024, decedent's two adult children filed claims for the surplus funds, and they are the successors in interest. However, there is no proof of service attached to the Claim.

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, NOVEMBER 15, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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

9.	24CV1066	DOE v. ESTATE OF LE CLAIR, CARL ROMANIK, and DOES
Motion to Strike		

Defendant Carl Romanik ("Defendant Romanik") brings this Motion to Strike Punitive Damages from the Verified Complaint. This case arises out of alleged child molestation involved the deceased, which is claimed to have occurred on an international trip. It is alleged that Defendant Romanik knew or should have known of the alleged molestation as it occurred in the shared residence.

Defendant moves the strike the portion of the Complaint regarding Plaintiff's punitive damages allegations, as follows:

1. In the fourth cause of action, Plaintiff requests punitive damages.
2. In the fifth cause of action, Plaintiff requests punitive damages.
3. In the sixth cause of action, Plaintiff requests punitive damages.
4. In the seventh cause of action, Plaintiff requests punitive damages.
5. In the eighth cause of action, Plaintiff requests punitive damages.
6. In the ninth cause of action, Plaintiff requests punitive damages.
7. In the Prayer for Relief, Plaintiff requests punitive damages.

Punitive damages may not be awarded against a deceased defendant's estate, since the primary purpose is to punish and deter the wrongdoer. (*Whelan v. Rallo* (1997) 52 Cal.App.4th 989, 995). At the time of the complaint's filing, Le Clair is deceased, and his estate is being sued in his stead. As the estate is being sued, any claim for punitive damages against it invalid. Defendant Romanik further argues that the allegations against him are insufficient to support punitive damages against him, and insufficient to support the necessary despicable conduct required for the elements of oppression, fraud, or malice.

Plaintiff filed a non-opposition to Defendant Romanik's Motion to Strike.

TENTATIVE RULING #9:

MOTION TO STRIKE 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.

10.	**PC20200378/PC20200374**	**NEJATIAN v. MITCHELL**
Motion for Attorney's Fees		

Nejatian ("Plaintiff" or "Nejatian") brings this Motion for Attorney's Fees ("Motion") pursuant to Code of Civil Procedure §§1032 and 1033.5, based in part, on the memorandum of costs filed. Defendant Mitchell ("Defendant") did not file a notice of motion or motion to tax. Plaintiff is requesting an order awarding $207,630.00 in attorney's fees based on an hourly rate of $450.00, and $24,098.20 in costs, for a total of $231,728.20.

Plaintiff brought the underlying lawsuit against Defendant to enforce his right of ownership of real property. Plaintiff states that Defendant conceded from very early on that he had a right of ownership of the real property, but Defendant nevertheless vigorously contested Plaintiff's claim despite admitted liability to transfer his real property to him as required under the parties' contract. The case had to continue to the point of jury verdict. Plaintiff argues there are three contracts at issue in this case, and that each one has a prevailing-party attorney's fees provision, which provides that the prevailing party shall be entitled to recover from the opposing party reasonable costs and attorney's fees to be determined and fixed by the court. (Ret Dec. ¶¶8-10)

Cal. Civ. Code Section 1717 (a) provides in any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Cal. Civ. Code Section 1717 (b) (1) provides in relevant part that the Court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment… a party prevailing on the contract shall be the party who were covered by greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

Under the rule relating to the recovery of attorney's fees in an action on contract providing for the prevailing party's recovery of attorney fees, if both parties prevail on affirmative claims the party with a net judgment in its favor is the prevailing party and the party entitled to attorney's fees. *Hughes Tool Co. v. Max Hinrichs Seed Co.* (1980) 112 Cal. App. 3d 194. Section 1717(b)(1) expressly provides that the prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. The jury found in favor of Nejatian on his contract action and awarded Nejatian $2 million. The jury also found in favor of Mitchell on her contract action and awarded her $500,000. Both parties prevailed on their contract claims and Nejatian obtained a $1.5 million net judgment. As a matter of law, Nejatian is the

prevailing party and entitled to reasonable attorney fees in addition to other costs. Section 1717(a)(B)(1); *Hughes Tool Co. v. Max Hinrichs Seed Co.* (1980) 112 Cal. App. 3d 194.

Under California law, the general rule is that the amount of an attorney's fee is within the sound discretion of the trial court in the absence of a patent abuse of discretion. *County of Madera v. Forrester* (1981) 115 Cal.App.3d 57, 65. California law also requires the court to use the touchstone or lodestar adjustment method of calculating the amount of an award. *Flannery v. Cal. Highway Patrol*, (1998) 61 Cal.App.4th 629, 639. The lodestar figure is calculated by taking the number of hours reasonably expended on the litigation and multiplying it by a reasonable hourly rate. *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48. The court may consider a variety of factors in assessing whether the number of hours expended, and hourly rates charged are reasonable. Those factors include: the nature of the litigation and its difficulty; the amount of money involved in the litigation; the skill required and employed in handling the litigation; the attention given to the case; the attorney's success, learning, age, and experience in the particular type of work demanded; the intricacy and importance of the litigation; the labor and necessity for skilled legal training and ability in trying the case; and, the amount of time spent on the case. *PLCM Grp. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Nieder v. Ferreira* (1987) 189 Cal.App.3d 1485, 1507.

The party opposing a fee motion bears a burden of rebuttal which requires submitting evidence challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party. *Gates v. Rowland* (9th Cir. 1994) 39 F.3d 1439, 1449. <u>There is no opposition filed.</u> Plaintiff's counsel argues the $450 hourly rate is reasonable and provides evidence in support of that argument. Counsel further argues that he spent 461.4 hours litigating the case over a period of four years. (Ret Dec. ¶3) He argues that the hours spent by counsel were necessary and reasonable for several reasons, which are outlined in the Motion. Of note, counsel is a sole practitioner, so all work was performed by him and arguably, there was no duplicative billing. He did not include billing for purely clerical work and adjusted billings to remove any duplicate or redundant work. (Ret Dec. ¶3)

Upon request by either party, or if the court on its own motion believes equitable considerations require either an increase or a reduction in the lodestar amount, the California Supreme Court identified factors that may be considered to either increase or reduce the lodestar amount. *Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48. A fairly and properly determined lodestar amount is fair and reasonable compensation for legal services provided in this case. The $450 hourly rate sufficiently considers the *Serrano* factors described above. Thus, Nejatian does not seek a multiplier in this case and argues there is no equitable basis to reduce the fundamental, fairly determined lodestar fee.

TENTATIVE RULING #10:

MOTION IS GRANTED. DEFENDANT ORDERED TO PAY $207,630.00 IN ATTORNEY'S FEES AND $24,098.20 IN COSTS, FOR A TOTAL OF $231,728.20 TO PLAINTIFF.

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.