November 22, 2024
Dept. 9
Tentative Rulings

1.	**22CV1022**	**LEATHERS v. TIPSY PUTT LLC, ET AL**
Motion to Enforce Settlement		

Plaintiff Alex Leathers ("Plaintiff") brings this Motion to Enforce Settlement Agreement ("Motion") against Defendants Tipsy Putt LLC, Jesse Ledin, Troy Beebe, Tipsy Putt SV LLC, Tipsy Putt Monterey LLC, Tipsy Putt NV LLC, Tipsy Putt Doco, LLC and Brandon Robinson ("collectively Defendants"). The case settled by Settlement Agreement ("Agreement") on July 22, 2024, and the settlement was to be paid as follows: (1) one check paid to Plaintiff within five (5) days following the execution of the Settlement Agreement in the amount of $25,000.00 ("Payment No. 1"); (2) one check paid to Plaintiff by August 15, 2024 in the amount of $25,000.00 ("Payment No. 2"); (3) one check paid to Plaintiff by August 15, 2024 in the amount of $8,645.91 ("Payment No. 3"); (4) one check paid to Plaintiff by September 15, 2024 in the amount of $110,000.00 ("Payment No. 4"); and (5) one check paid to Webber & Egbert Employment Law, P.C. by September 15, 2024 in the amount of $181,354.09 ("Payment No. 5"). Stewart Decl. ¶5.

Plaintiff alleges that Defendants have satisfied payments 1 through 3 but payments 4 and 5 are due and owing. The Agreement states that Defendants are liable for the attorneys' fees and costs incurred by Plaintiff for this Motion, and they are liable for 10% interest per annum once Plaintiff obtains a judgment for collection of the past due payments. Stewart Decl. ¶7. Based on the foregoing, Defendants owe Plaintiff $291,354.09, the balance of the Settlement Sum. To date, Defendants also owe Plaintiff $3,010, the attorneys' fees and costs incurred by Plaintiff for this Motion. Stewart Decl. ¶¶8-9; Egbert Decl. ¶7.

"If parties to pending litigation stipulate, in writing signed by the parties outside the presence of the court . . . , for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." Cal. Code Civ. Proc. § 664.6(a). "[A] writing is signed by a party if it is signed by . . . (1) [t]he party." Cal. Code Civ. Proc. § 664.6(b). A settlement agreement is governed by the legal principles applicable to contracts generally. A settlement contract also has the attributes of a judgment in that it is decisive of the rights of the parties and serves to bar reopening of the issues settled. Absent a fundamental defect in the agreement itself, the terms are binding on the parties and the agreement may be enforced pursuant to Code of Civil Procedure section 664.6. *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988-989.

Plaintiff argues that: all issues were resolved under the Agreement; the Agreement is valid and binding; it was properly executed by the Parties; there is no bar to entry of judgment and enforcement of the Agreement; Defendants failed to make settlement payment numbers 4 and 5 by September 15, 2024, in violation of the Agreement; Defendants never challenged the binding nature and enforceability of the Agreement; and Defendants have consistently represented that they know they owe the full sum set forth in the Agreement.

There was no opposition filed by Defendants.

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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2.	**PC20200596**	**MALONE v. WEAHUNT JR, ET AL**
Motion for Attorney's Fees		

This case arises from a construction contract, where Defendant Robert Weahunt, Jr. ("Defendant") was hired to build a house for Desiree Malone ("Plaintiff") within a designated time frame and budget. He did not comply with the time frame and did not complete the build. After repeated requests by Plaintiff that he complete the build, Defendant recorded a verified mechanics lien against the property for the full contract price (the "Lien"). The case was forced into litigation based upon Defendant's refusal to remove the fraudulent Lien. Plaintiff eventually was able to purchase a release of Lien from Defendant, but he continued to refuse to dismiss his lien claims against Plaintiff, thereby preventing Plaintiff from removing the cloud on title.

On March 15, 2024, the Court orally entered judgment. In the June 6, 2024, written ruling, the Court awarded Plaintiff damages, exclusive of costs and attorney's fees available on the slander of title claim. The ruling states: "The court finds it appropriate to award Plaintiff her attorney's fees and costs connected solely with the actions necessary to clear the title. Such fees and costs will be determined by noticed motion."

Plaintiff brings this Motion for Attorney's Fees and Costs. Plaintiff requests the full amount of her attorney's fees and costs, which is stated to be $209,977.08, broken down as attorney's fees of $182,945.00 and costs of $27,907.08.

In general, the reasonableness of attorney fees is determined by evaluating the hourly rate charged and the time spent against the following factors; (1) the nature of the litigation; (2) its difficulty; (3) the amount involved; (4) the skill required in its handling; (5) the skill employed; (6) the attention given; (7) the success or failure; and (8) other circumstances in the case to ensure that the amount awarded represents reasonable attorneys' fees. (*Clarion Development Co. v. Falvev)* (1998) 206 Cal. App. 3d 438, 447. In determining the amount of fees to award the prevailing party, a "lodestar" figure typically is determined, i.e., the number of hours reasonably expended, multiplied by the reasonable hourly rate charged for the services rendered. The Court may rely on the declaration of counsel as to the rate and hours incurred without the necessity of producing detailed time records (*Steiney & Ci, v. Cal. Elec. Supply Co.* (2009) Cal.App.4th 285, 293.)

Plaintiff's counsel bills in .1-minute increments at a rate of $350.00. (Decl. Odell, ¶9). Based on his level of experience and the subject matter involved, the Court finds that an hourly rate of $350 is reasonable. Over the course of the litigation, which went on for four years, he billed a total of 520.20 hours, for a total of $182,070.00.[1]

[1] The Memorandum of Points and Authorities indicates the amount of attorney's fees is $182,945.00, but the Declaration of Mr. Odell states it is $182,070.00.

Plaintiff argues that Defendant clouded title by recording his Lien; making false statements to the construction lender and other subcontractors that Plaintiff owed him money; and filing his Cross-Complaint, which included alleged false statements and was founded on his fraudulent Lien. Plaintiff further argues that Defendant's release of Lien "did not remove the cloud his slanderous statements case over the value, and marketability of the Property" and that the cloud wasn't removed until after the full trial.

Plaintiff argues that pursuant to California Code of Civil Procedure §1102, she would need to disclose the defects in construction, defective grading and flooding, if she were to sell the property. While that may be the case, the Court ordered that Plaintiff was entitled to fees for clearing title and is not evaluating Defendant's actions that may "have a negative impact on the value of the property reducing the number of potential buyers…" when that is not at issue.

The Court does not dispute that Defendant slandered title to Plaintiff's property, but damages were already awarded for other causes of action. The Court intended to award attorney's fees and costs involved in removing the Mechanic's Lien from the property only.

While there is no opposition filed, the Court has discretion to reduce the lodestar figure and does not find that an award of full attorney's fees and costs is reasonable, when the Court specifically ordered that Plaintiff may recover fees and costs associated only with clearing the title. Plaintiff's counsel did not meet his burden of showing which fees and costs were specifically involved in clearing title.

As to the costs, the court declines to grant any costs, finding that Plaintiff has insufficiently demonstrated which costs are related to the slander of title cause of action. The court is mindful that all these costs might be recoverable to Plaintiff as the prevailing party on the action as a whole, but the court will defer that determination until the time that such a request is made, if appropriate.

As to attorney's fees, the court finds it cannot determine from Plaintiff's counsel's block billing what fees are related to the slander of title cause of action. At the same time, it would be unjust to deny any fees to Plaintiff related to the slander of title cause of action, particularly given what the court deems to have been egregious conduct by Defendant in slandering the title of Plaintiff. However, upon the court's own assessment of the amount of time dedicated to the slander of title cause of action at trial in addition to the court's sense of the factual issues involved with that cause of action, the court finds that at most 10% of the litigation activities are reasonably attributed to the slander of title cause of action. The court finds good cause to award $17,500 in fees based on 50 hours of attorney work at $350 per hour.

TENTATIVE RULING #2:

PLAINTIFF IS AWARDED ATTORNEY'S FEES IN THE AMOUNT OF $17,500.00.

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3.	PC20200539	BOWMAN v. GOLD COUNTRY HOMEOWNERS
Motion for Leave		

Jeff and Carrie Bowman (collectively "Plaintiffs") brought this action against their homeowner's association and former members of its board[1] for their alleged malicious prosecution of underlying litigation.

Plaintiffs move for leave to amend the Complaint to: (1) add a negligence cause of action against Gold Coast Homeowners Association ("GCHOA" or "Gold Coast"); (2) add a breach of fiduciary duty cause of action against all defendants; (3) change references to deceased defendant Robert Vannucci to "the Estate of Robert Vannucci"; (4) delete the name of previous defendant Richard Warinner, who has been dismissed by motion from this action; and (5) include a prayer for prevailing party attorney's fees as authorized by the Davis-Stirling Act.

A proposed amended complaint has not been submitted.

The proof of service in the court's file declares that on October 1, 2024, notice of the hearing and copies of the moving papers were served by e-mail on all Defendants, aside from Richard Warinner, who has been dismissed.

Request for Judicial Notice

Plaintiffs request the court to take judicial notice of a statement of decision and judgment in *Gold County Homeowners Association v. Jeff Bowman, et al.*, El Dorado County Superior Court, action no. PC20170366, as well as a request for dismissal in *Robert Burnley, et al. v. Barbara Erb, et al.*, El Dorado County Superior Court, action no. PC20200069.

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.

Plaintiffs' requests for judicial notice are granted.

[1] Defendants currently include Gold Country Homeowners Association, Darlene Ott, Randall Benton, Barbara Erb, Donald Erb, Robert Vannucci, Richard Warinner, and Does 1 through 50 (collectively "Defendants").

Standard

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code of Civil Procedure, § 473(a)(1).)

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1047.) The rule of great liberality is particularly important where an amendment is sought to an answer. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159; *Hyman v. Tarplee* (1944) 64 Cal.App.2d 805, 813-814.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) "…absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (*Board of Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

Argument

Plaintiffs argue that the proposed new causes of action are directly related to the same subject matter of the dispute, which is the subject of this action, that is the handling of the underlying litigation brought against Plaintiffs. Plaintiffs state they were unaware of these additional claims, until the parties had engaged in written discovery and deposition(s), which revealed additional conduct of the Defendants that support additional causes of action. Plaintiffs argue that the proposed amendment is necessary and proper to allow Plaintiffs to recover all damages they suffered from Defendants' wrongful actions, that trial is not set until September 2, 2025, and that discovery is ongoing. Plaintiffs further argue that this Motion was necessary because after circulating a proposed first amended complaint to defense counsel, that defense counsel refused to stipulate.

Plaintiffs point to the strong public policy favoring granting leave to amend at any time before trial. (*Dye v. Caterpillar, Inc.* (2011) 195 Cal.App.4th 1366, 1380; Cal. Code Civ. Proc. § 576 ["Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading. . . ."]). If delay in seeking the amendment has not misled or prejudiced the other side, the liberal policy of allowing amendments prevails. In fact, it is an abuse of discretion to deny leave in such a case, even if sought as late as the time of trial. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-5658; see also, *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945.)

Opposition

Defendants Darlene Ott, Randall Benton, Barbara Erb, Donald Erb, and Robert Vannucci ("board members") oppose the Motion, arguing that leave to amend should be denied because of unreasonable delay, seeking to add allegations that were expressly made in other litigation[1], and resulting duplicative pending actions. The Complaint in this case was filed on October 21, 2020, and Defendants argue that Plaintiffs' counsel's declaration does not support why the causes of action were not previously known, or what new or different facts were discovered.

Further, the board members argue that adding causes of action in this case that Plaintiffs walked away from in the Burnley case would be barred by the statute of limitations and res judicata. See *Yee v. Mobilehome Park Rental Review Board* (1998) 62 Cal.App.4th 1409, 1429; *Aroa Marketing, Inc. v. Hartford Ins. Co. of Midwest* (2011) 198 Cal.App.4th 781, 789. The board members continue, that it is disingenuous for Plaintiffs to claim that the causes of action for negligence and breach of fiduciary duty were not known, when the Plaintiffs previously sued for breach of fiduciary duty.

The board members also argue that Code of Civil Procedure §430.10(c) prohibits a party from filing a second action when another is still pending. It seems this argument should not apply considering that Plaintiffs dismissed themselves from the other lawsuit, so this is their only case against the board members.

The board members further argue that the proposed amendment to add the Estate of Robert Vannucci is improper and time-barred, because he died on March 21, 2021, which has been known to Plaintiffs. The board members argue that pursuant to Code of Civil Procedure §366.2, an action against a decedent's estate must be made within one year after the date of death yet Plaintiffs have done nothing for three years and that means Plaintiffs are time barred from suing Robert Vannucci's Estate. Moreover, the board members allege that any claim against a decedent must be done in Probate Court and that Plaintiffs have not filed any claims in Probate Court against Robert Vannucci, his estate or personal representative. The board

[1] Defendants argue that Plaintiffs, along with other parties, first filed a lawsuit against current and former GCHOA board members, which included a cause of action for breach of fiduciary duty. The Bowmans later dismissed themselves from that case and filed the current case.

members state that there is no evidence that Plaintiffs complied with Probate Code §9100 or made any attempt to do so.

Reply

Plaintiffs note that GCHOA did not file an opposition, despite not stipulating to the amendment. Plaintiffs respond to the board members arguing that of the Plaintiffs in the other lawsuit, only the Bowmans were subject to malicious prosecution, so this action is "entirely different." (Reply, p. 2) Further, in the other lawsuit, the only damages sought are for assessment, which is not involved the current lawsuit. Plaintiffs allege that whether the statute of limitations bars amendment to include the Estate of Robert Vannucci is not proper at this stage, and that Plaintiffs never received proper notice of his death.

TENTATIVE RULING #3:

MOTION 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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4.	PC20170021	LUNSMANN v. COUNTY OF EL DORADO, ET AL
Motion to Dismiss		

Defendant County of El Dorado ("County" or "Defendant") brings this Motion to Dismiss for Failure to Bring Matter to Trial Within 5 ½ Years ("Motion") against Petitioner Jeffrey Lunsmann ("Petitioner").

This case arises out of development impact fees that were assessed by the County against Petitioner in 2016, in connection with Petitioner's application for building entitlements to construct a new dwelling. Petitioner paid the fees in 2016, and then filed his Complaint on January 17, 2017. Defendant argues that since the filing, Petitioner has failed to diligently prosecute this case and bring it to trial within 5 years as required by Code of Civil Procedure ("CCP") § 583.310 (extended by 6 months in the Cal. Rules of Court, App. I R.R., Emergency Rule 10). Accordingly, Defendant argues that Code of Civil Procedure § 583.360 mandates that Petitioner's action be dismissed.

On January 18, 2019, the County filed a Case Management Statement and offered to stay this case pending the appeal *Austin v. County of El Dorado*, which involved identical issues. Petitioner did not agree to the stay.

The County states that it has not received any communication from Petitioner or his counsel since May 2021, and that the parties have not stipulated or otherwise agreed to extend the five-year statutory deadline to bring this action to trial.

CCP § 583.310 provides a mandatory requirement that, "an action shall be brought to trial within five years after the action is commenced against the defendant" ("the Five-Year Statute"). "The action is 'commenced' upon plaintiff's filing the original complaint against defendant." (*Bank of Am. v. Superior Court* (1988) 200 Cal.App.3d 1000, 1010-1011 [citing Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (1987) § 11:193.1, p. 11-63]). During the COVID-19 pandemic, the five-year requirement of CCP § 583.310 was extended "for all civil actions filed on or before April 6, 2020 … by six months for a total time of five years and six months." (R. app. I Emergency Rule 10.)

The consequence of failing to bring a case to trial as specified by the statute is mandatory dismissal. Section 583.360 provides:

> (a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.
>
> (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

"Thus, unless some specified exception applies, a trial court has a mandatory duty to dismiss an action and a defendant has an absolute right to obtain an order of dismissal, once five [and a half] years has elapsed from the date the action was commenced." (*M & R Properties v. Thomson* (1992) 11 Cal.App.4th 899, 903.) The County argues that Petitioner has not diligently prosecuted his case, which has not gone to trial within 5 ½ years since it was filed and that no exception to CCP § 583.260 was established.

In *Moss v. Stockdale, Peckham & Werner* (1996) 47 Cal.App.4th 494, the Court of Appeal summarized the exceptions to the five-year statute as follows: (1) written stipulations or oral agreements made in open court extending the five-year time period; (2) exclusion from the computation of the five years any time period during which the jurisdiction of the court was suspended or the prosecution of the action was stayed; and (3) bringing the action to trial was impossible, impracticable, or futile. [*Id*. at p. 501 [citing Code Civ. Proc. §§ 583.330, subds. (a), (b), 583.340, subds. (a–c)].] Defendants argues that none of those exceptions apply here because: (1) there have been no stipulations or agreements made to extend the five-year period (Hansen Decl. ¶18); (2) at no point since Petitioner's initiation of this action has the jurisdiction of the Court been suspended or the prosecution of the action stayed (Hansen Decl. ¶19); and, (3) bringing the action to trial has not been impossible, impractical, or futile. (Hansen Decl. ¶21)

Plaintiff filed a "Response" to the Motion, not an Opposition. The Response reads as somewhat of a declaration regarding the timeline for events but offers no rebuttal to the application of CCP §583.360. Defendant filed a further Reply, which the Court reviewed but it does not alter the analysis.

TENTATIVE RULING #4:

MOTION TO DISMISS GRANTED – CASE IS DISMISSED WITHOUT PREJUDICE.

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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5.	**24CV2187**	**MATTER OF KERR**
Compromise of Minor's Claim		

On October 4, 2024, Margaret Kerr, the parent of the minor who is the subject of this filed an application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on October 4, 2024.

This is a Petition to compromise a minor's claim. The Petition states the minor sustained generalized, undiagnosed emotional distress after watching his father suffer an accident due to a product failure in 2022. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $116,000.

The Petition states the minor incurred $0.00 in medical expenses, so there are no invoices attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has not fully recovered and continues to suffer from temporary emotional distress. A doctor's report concerning the minor's condition and prognosis of recovery is not attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $12,500.00, which represents approximately 11% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The minor's attorney also requests reimbursement for costs in the amount of $0.00 so there are no copies of bills attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the $103,500.00 due to the minor, the Petition requests that they be deposited into a tax-free structured settlement annuity policy from Pacific Life Insurance Company, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name but not the address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition, along with documents to cure the defects above. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #5:

APPEARANCES REQUIRED ON FRIDAY, NOVEMBER 22, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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

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

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

6.	**24CV2186**	**HENRICKSEN v. RYLLE**
Compromise of Minor's Claim		

On October 4, 2024, Margaret Kerr, the parent of the minor who is the subject of this filed an application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on October 4, 2024.

This is a Petition to compromise a minor's claim. The Petition states the minor sustained generalized, undiagnosed emotional distress after watching his father suffer an accident due to a product failure in 2022. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $116,000.

The Petition states the minor incurred $0.00 in medical expenses, so there are no invoices attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has not fully recovered and continues to suffer from temporary emotional distress. A doctor's report concerning the minor's condition and prognosis of recovery is not attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $12,500.00, which represents approximately 11% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The minor's attorney also requests reimbursement for costs in the amount of $0.00 so there are no copies of bills attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the $103,500.00 due to the minor, the Petition requests that they be deposited into a tax-free structured settlement annuity policy from Pacific Life Insurance Company, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name but not the address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition, along with documents to cure the defects above. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, NOVEMBER 22, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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7.	**23CV0518**	**LE, ET AL v. RAM, ET AL**
Demurrer		

The matter comes before the court pursuant to Defendants' March 19, 2024 demurrer to Plaintiffs' Second Amended Complaint.

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.

Further, 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").

The Court understands that the parties have successfully met and conferred on other issues previously – specifically, they were able to resolve issues informally and agreed to stipulate leave for Plaintiffs to file a second amended complaint. However, prior to this Demurrer, it seems that the meet and confer efforts were insufficient. Mr. Lee claims that he sent e-mails on March 15, 2024, with no substantive response, and then filed this Demurrer on March 19, 2024.

However, according to Ms. Barnes' declaration, after Mr. Lee's objections to the second amended complaint in February 2024, she responded with a substantive analysis. Mr. Lee then

did not respond until he emailed a copy of the unfiled demurrer in mid-March. The Court notes that Mr. Lee's March 15, 2024 email to Ms. Barnes required a same-day answer to his proposal for Plaintiffs to seek ex parte leave to file a third amended complaint.

Rather than attempting to speak on the phone, Defendants proceeded to file this Demurrer. As stated in *Dumas*, the Court here finds that further conferences between the parties would likely be productive, and hereby orders the parties to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer. *Dumas, supra,* 45 Cal.App.5th 348. The court therefore continues the matter to January 3, 2025 at 8:31 a.m. in Department 9.

TENTATIVE RULING #7:

THE PARTIES ARE DIRECTED TO MEET AND CONFER IN AN ATTEMPT TO RESOLVE THE DEMURRER. MATTER CONTINUED TO JANUARY 3, 2025 AT 8:31 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).

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