1.	23CV0990	BARRAGAN et al v. PRASAD et al
Motion to Be Relieved		

Counsel for the Plaintiff Jaime Ruben Barragan 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 there has been a breakdown of the attorney-client relationship and efforts to rectify the issues have been unsuccessful.

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 Defendants at their last known address and on counsel for Defendant was filed on October 24, 2024.

Trial is set on May 27, 2025, which is not listed in the proposed Order. There is also a settlement conference on April 2, 2025, which is listed on the proposed Order.

Per the supporting declaration, Counsel has been unable to locate his client despite efforts by a private investigator. The court orders the parties to appear to resolve the motion. If the motion is granted, Counsel will need to submit a revised order which includes the omitted court dates.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON DECEMBER 13, 2024 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.

2.	23CV1556	RIAZ v. HUGHES et al
Motion to Set Aside Default		

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…

The Complaint and Summons were filed on September 13, 2023. There is proof of substituted service as to Gabriela Ragan on November 6, 2023, and personal service on Stephen Ragan on November 6, 2023. The requests for default were filed and granted on April 22, 2024. On June 21, 2024, Plaintiff was granted an extension of time to serve and file the pleadings.

In the initial Motion to Set Aside Default, it is signed by both Gabriela Cardena and Stephen Ragan. They ask the court to set aside the default entered and declare that they did not file a response to the summons and complaint because they had not received them until July 4, 2024, at which time it was too late to file a response. There is an amended Motion that does not move the Court to take any action, aside from in the declaration. It is only signed by Gabriela Cardena.

There is no allegation of mistake, inadvertence, surprise or excusable neglect by Gabriela Cardena nor Stephen Ragan. Neither the initial Motion nor the amended Motion is accompanied by a copy of the pleading proposed to be filed. The court continues the motion to February 7, 2025 at 8:30 a.m. in Department 9 to give Defendants an opportunity to submit a proposed answer and to file a declaration that more fully sets forth the basis for their motion. The declaration and proposed answer shall be filed and served on the other party by January 9, 2025.

TENTATIVE RULING #2:

THE MATTER IS CONTINUED TO FEBRUARY 7, 2025 AT 8:30 A.M. IN DEPARTMENT NINE TO GIVE DEFENDANTS AN OPPORTUNITY TO SUBMIT A PROPOSED ANSWER AND TO FILE A DECLARATION THAT MORE FULLY SETS FORTH THE BASIS FOR THEIR MOTION. THE DECLARATION AND PROPOSED ANSWER SHALL BE FILED AND SERVED ON THE OTHER PARTY BY JANUARY 9, 2025.

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

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

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

3.	22CV0329	STIXRUD v. KEY
Motion to be Relieved (2)		

Counsel for the Defendants Norcal Gold, Inc. and Eduardo G. Zuniga has filed motions to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

Declarations on Judicial Council Form MC-052 accompanies the motions, as required by California Rules of Court, Rule 3.1362, stating that the attorney-client relationship ceases to exist, and the client wants to proceed with a different approach.

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 Defendants at their last known address and on counsel for Plaintiff was filed on November 21, 2024.

There is an Issues Conference on February 7, 2025, and trial on February 18, 2025, and those dates are listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #3:

ABSENT OBJECTION, THE MOTIONS ARE GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDERS (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). ORDERS ARE EFFECTIVE UPON FILING OF PROOF OF SERVICE INDICATING SERVICE OF THE SIGNED ORDERS ON THE CLIENTS.

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.	22CV0690	MALAKHOV v. MARTINEZ
Discovery		

Plaintiff Joshua Brost ("Plaintiff") brings this Motion to Compel Defendant Alejandro Martinez ("Defendant"). The Notice does not comply with Local Rule 7.10.05.

Pursuant to the California Rules of Court, Rule 3.724(8), the parties must meet and confer in person or by telephone. Per her Declaration, counsel sent one meet and confer letter to Defendant.

Plaintiff states that the Request for Admissions were served on May 17, 2024, and therefore Defendant's responses were due on June 18, 2024. Plaintiff claims there has been no response. The introduction states that Plaintiff is requesting an Order compelling Defendant to provide verified responses to the Request for Admissions (lines 4-6), but then states that Plaintiff is requesting that the Court find the admissions propounded upon Defendant are deemed admitted (lines 12-13).

Pursuant to California Code of Civil Procedure ("CCP") § 2033.280, Plaintiff is entitled to an order deeming the requests admitted based on Defendant's failure to respond. That section also mandates that the Court impose monetary sanctions on the party who failed to serve a timely response.

TENTATIVE RULING #4:

BECAUSE THE NOTICE DOES NOT COMPLY WITH LOCAL RULE 7.10.05, APPEARANCES ARE REQUIRED ON FRIDAY, DECEMBER 13, 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).

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5.	24CV2106	BAZEMORE JR. v. BYC ENTERPRISES, LLC et al
Motion		

Plaintiff brings this Application for Writ of Attachment and Right to Attach Order against Defendants Jarrod J. Zehner ("Zehner") and BYC Enterprises, LLC ("BYC")(collectively "Defendants") to secure his claim rescission and money damages while this action is pending in the amount of $341,624.00. The Application for Right to Attach Order and Order for Issuance of Writ of Attachment ("Application") was concurrently filed.

The parties entered into a written contract which obligated BYC Enterprises, LLC to provide excavation, grading, retaining walls, concrete flatwork and stairs, lighting, drainage, irrigation and planting. The total contract price was $858,560.00, of which $138,750 was to be paid directly to a subcontractor, Defendant Tailored Tree, Inc., licensed only to provide tree removal and pruning. According to Plaintiff, he was unaware that none of the Defendants were actually licensed to perform the work outlined in the Contract. Plaintiff alleges that Defendants collected over $341,000 before any work commenced, which is in violation of California Business & Professions Code §7159. Plaintiff provided written notice of rescission on September 11, 2024.

<u>California Code of Civil Procedure ("CCP") § 484.020 provides:</u>

> The application shall be executed under oath and shall include all of the following:
>
> (a) A statement showing that the attachment is sought to secure the recovery on a claim upon which an attachment may be issued.
>
> (b) A statement of the amount to be secured by the attachment.
>
> (c) A statement that the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
>
> (d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under Title 11 of the United States Code (Bankruptcy) or that the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).
>
> (e) A description of the property to be attached under the writ of attachment and a statement that the plaintiff is informed and believes that such property is subject to attachment…

Plaintiff argues that his Application satisfies the requirements for an Attachment – his claim for Rescission and Money Damages is a claim upon which an attachment may be issued, he has established the probable validity of the claim, the attachment is not sought for a purpose

other than the recovery on the claim upon which the attachment is based, and the amount to be secured by the attachment is greater than zero.

Plaintiff next argues that while his claims sound in rescission, they still qualify for attachment based on case law, citing *Bennett v. Superior Court (Los Angeles)* (1933) 218 Cal. 153 at 161:

> Consequently, even if such an action may properly be regarded as partially legal and partially equitable, it will make no difference. The plaintiff is nevertheless entitled to a writ of attachment by virtue of the fact that he is suing for a recovery upon the contract which is the gravamen of the action.

Lastly, Plaintiff argues that he has established the probable validity of his claim, as required by CCP § 484.090(a)(2). A claim with "probable validity" is defined as a claim in which it is "more likely than not that the plaintiff will obtain a judgment against the defendant." (CCP §481.190.) Plaintiff argues that Defendants have wrongfully exercised possession and control over Plaintiff’s property and disregarded Plaintiff's requests to turn over and restore possession to Plaintiff. He further argues that Defendants have wrongfully and substantially interfered with his property by knowingly and intentionally continuing its possession, preventing Plaintiff from having access to it and refusing to return it. The property at issue is Plaintiff’s $341,624. Plaintiff claims that if he was aware of the falsity of Defendant’s representations regarding licensure, he would not have executed the Contract or provided any funds to Defendant. Plaintiff argues that Defendants obtained Plaintiff’s money by inducing payment based upon concealment of material facts known to them – acting outside the scope of their licenses, requiring advance payments in an unlawful amount, concealing these material facts knowing that Plaintiff would not have paid had he known them.

Plaintiff states he will file an undertaking of the requisite amount, pursuant to CCP §489.210 as directed by the Court.

Defendants filed an Opposition arguing: that Plaintiff’s Application is procedurally defective, Plaintiff cannot establish the right to Attachment because Attachment may only be issued upon contract claims for money and the claims lack probable validity, that the amount to be secured by the Attachment should be reduced, and that Zehner’s property is exempt from Attachment.

First, Defendants argue that the Application is procedurally defective against BYC because the boxes checked on the form indicate the property sought to be attached belongs only to Zehner and not BYC.

Defendants agree that Plaintiff may seek attachment for his claim for recission and money damages, but they argue that the claim does not have probable validity because BYC Enterprises, LLC was not a party to the contract, only BYC Landscaping and Backyard Customs

Landscaping. However, the contract is on the LLC's letterhead. Defendants further argue that Plaintiff's claim for recission against Zehner fails because there is no evidence that Zehner actually performed any services for which he did not hold the proper license.

Defendants argue that Plaintiff's claim for money had and received lacks probable validity merely because the check was made out to BYC Enterprises, not Zehner or his fictitious business name, BYC Landscaping. This is unpersuasive considering the check was accepted and assumably deposited by an entity owned and/or controlled by Zehner.

Defendants argue that the amount to be secured by the attachment should be reduced because Plaintiff paid $272,249 to BYC Enterprises, and the other $69,375 was paid to Tailored Tree. Lastly, Defendants argue that Zehner's property is exempt from attachment based on the concurrently filed Claim of Exemption.

TENTATIVE RULING #5:

APPLICATION FOR WRIT OF ATTACHMENT DENIED.

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

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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.	22CV1904	FRANKS et al v. NGUYEN et al
Motion to Be Relieved & Settlement Conference		

Counsel for the Defendant, Hue Thi Nguyen, 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 stopped communicating, has all the documents and information in the case and has not produced it. Counsel is in Africa for 18 months.

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 Defendants at their last known address and on counsel for Plaintiff was filed on November 12, 2024.

Trial is currently scheduled on January 21, 2025, and the date is listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

***

Counsel for Defendant Viet Hong Duong filed a Motion to Continue the Settlement Conference and Trial. Discovery is not complete. Defendant argues good cause exists for a continuance because the testimony of Ms. Nguyen is necessary and her availability is unknown, and essential documents still need to be obtained from Ms. Nguyen. Pursuant to California Rule of Court (CRC) 3.1332, this Court has the authority to continue trial upon an affirmative showing of good cause. There is no opposition by any of the other parties.

The court notes that the parties submitted a stipulation for the continuance; however, this stipulation did not indicate any specific consent of the Defendant Nguyen, who presumably will be without counsel due to the concurrently-filed motion. To ensure due process, the court is handling this request at the hearing to provide an opportunity for an objection to this tentative ruling. Finding good cause, the court continues the matter and orders the parties to appear to select new settlement conference and trial dates. If Defendant Nguyen objects to the continuance, he should request oral argument through his counsel.

TENTATIVE RULING #6:

1. **ABSENT OBJECTION, THE MOTION TO BE RELIEVED 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 THE SIGNED ORDER ON THE CLIENT.**

2. **CONTINUANCE GRANTED. APPEARANCES REQUIRED ON FRIDAY, DECEMBER 13, 2024, AT 8:30 AM IN DEPARTMENT NINE TO PICK NEW SETTLEMENT CONFERENCE AND TRIAL DATES.**

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

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

7.	24CV0795	DODIER v. ILLERS et al
Motion to Be Relieved		

Counsel for Defendant Anthony Illers 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 there has been a breakdown in the attorney-client relationship.

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 Defendants at their last known address and on counsel for Plaintiff was filed on October 30, 2024.

The case is currently set for Motion Hearing on November 21, 2025, trial confirmation on December 5, 2025, and trial on December 9, 2025, and those dates are listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #7:

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 THE SIGNED ORDER ON THE 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).

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

8.	23CV0395	VELLA v. PELA
Compliance Review		

On October 11, 2024, the Court sanctioned Plaintiff in the amount of $2,500.00, payable to Defendant by November 15, 2024, and reserved jurisdiction to augment the sanctions award at this hearing based upon the status of Plaintiff's compliance with the underlying discover requests.

TENTATIVE RULING #8:

APPEARANCES REQUIRED ON FRIDAY, DECEMBER 13, 2024, AT 8:30 AM IN DEPARTMENT NINE TO UPDATE THE COURT REGARDING STATUS OF PLAINTIFF'S COMPLAINCE WITH THE DISCOVERY REQUESTS.

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

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

9.	PC20200635	BELAND et al v. LAKE POINTE VIEW ROAD OWNERS
MSJ		

On August 23, 2024, Defendants filed and served a Notice of Motion for Summary Judgment or in the Alternative, Summary Adjudication, and supporting documents thereto. While there are multiple plaintiffs in this action, the motion is in reference only to those claims brought by Richard Nelson and Sandra Nelson. Therefore, for the avoidance of doubt, Richard and Sandra Nelson, without inclusion of the remining plaintiffs, will be collectively referred to herein as Plaintiffs.

Plaintiffs filed and served Plaintiff Nelson's Opposition to Defendants' Motion for Summary Judgment and/or Summary Adjudication, and all supporting documents thereto, on November 19th.

On December 6, 2024, Defendants filed their Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment or in the Alternative, Summary Adjudication and Defendants' Objections to Evidence Cited by Plaintiffs in Opposition to Defendants' Motion for Summary Judgment, or in the Alternative, Summary Adjudication.

Request for Judicial Notice

In support of their opposition to the motion, Plaintiffs filed a Request for Judicial Notice asking the court to take notice of the 1986 CC&Rs. Defendants have not opposed the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Ev. Code § 452(h).

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

Here, the 1986 CC&Rs were recorded at the time they were put into place and therefore the court does find that their contents are not reasonably subject to dispute. Additionally, Plaintiffs have complied with the requirements of Section 453, therefore the court is compelled

to grant the judicial notice request. As such, Plaintiffs' request is granted, and the court hereby takes judicial notice of the 1986 CC&Rs.

Evidentiary Objections

The court rules on the evidentiary objections raised by Defendants as indicated on the attached pdf.

Motion for Summary Judgment/Adjudication

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

The moving party bears the initial burden of making a prima facie case for summary judgment. White v. Smule, Inc., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018). Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010). "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850.

Here, the question presented is whether Plaintiffs have standing to bring their claims against Defendants when they no longer own their Lake Point View property. After reviewing the filings of the parties as outlined above the court finds this question to be answered in the affirmative.

An individual's standing to bring suit is a threshold question in all matters, and one that has been heavily litigated. *See* Cal. Civ. Pro. § 367 ("Every action must be prosecuted in the name of the real party in interest…"). Specifically, courts have addressed the issue of whether or not an individual whose property has been wrongfully damaged by another loses the right to recover for that damage where he or she has sold the property at the time of suit. *See* Jasmine Networks, Inc. v. Sup. Ct., 180 Cal. App. 4th 980 (2009). In fact, the court in *Jasmine Networks, Inc. v. Sup. Ct.* provided a detailed summary of case law on the issue and found definitively that

"…none of them casts the slightest doubt on the central premise that a right of action for damage to property is distinct from the title to the property, and from any right in the property, and that the transfer of the latter does not by itself effect a transfer or diminution of the former." *Jasmine Networks, Inc.,* at 995.

Here, Plaintiffs allege that during the time they owned the Lake Pointe View property they suffered extensive monetary damages. The law is well settled that simply by selling the property they did not transfer their right to bring suit and recover for those damages. The right to sue is not "analogous to a covenant running with the land, but a distinct form of *personal* property in its own right." *Jasmine Networks, Inc.*, at 994 *citing* Vaughn v. Dame Const. Co., 223 Cal. App. 3d 144 (1990)(emphasis in original).

Defendants cite case law which stands for the proposition that directors of an HOA owe fiduciary duties to the association and its members. They argue that there is no duty owed to nonmembers which, as the Plaintiffs stand today, they are nonmembers. The fault with Defendants' argument, however, is they are failing to look at the time the alleged injury occurred. In fact, it appears the parties are in agreement that Plaintiffs were property owners, and therefore members of the association, during the relevant time period.

Additionally, Defendants provide no law on point which stands for the proposition that when an individual, who is a property owner, sells that property they sell along with it their right to bring suit to recover damages for injuries that allegedly occurred while they owned the property. Defendants' reliance on *Martin v. Bridgeport Community Ass'n*, 173 Cal. App. 4th 1024 (2009) is misplaced. *Martin* addressed the issue of whether or not tenants living at the property could enforce the applicable CC&Rs. The tenants in that matter were not, and never had been, property owners. In the matter at hand, Plaintiffs were property owners who were bound by the CC&Rs at the relevant time period when the alleged injury occurred.

Because Defendants have not provided any information that would establish that one or more of the requisite elements of standing has been conclusively disproved or cannot be established, they have failed to meet their burden of proof for summary judgment or adjudication. Accordingly, the motion is denied.

TENTATIVE RULING #9:

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE OF THE 1986 CC&RS IS GRANTED. RULINGS ON DEFENDANTS' EVIDENTIARY OBJECTIONS ARE AS ATTACHED. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, IS DENIED.

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

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

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

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

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Attorneys for Defendants
LAKE POINTE VIEW ROAD OWNERS ASSOCIATION fka GUADALUPE PROPERTY OWNERS ASSOCIATION, GINA HAYNES (erroneously sued as Gina Hayes), JAMES GALLEGO, LEONARD CRAWFORD, NORBERT WITT, THOMAS BORGE, and THE ESTATE OF ROLAND BRECEK

ELECTRONICALLY FILED
Superior Court of California,
County of El Dorado
12/06/2024 at 08:14:44 AM
By: Sara Platt, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF EL DORADO

BRIAN BELAND, DENAE BELAND, JAMES MASTEN, ROBIN MASTEN, RICHARD NELSON, SANDRA NELSON,

Plaintiffs,

v.

LAKE POINTE VIEW ROAD OWNERS ASSOCIATION fka GUADALUPE PROPERTY OWNERS ASSOCIATION, GINA HAYES, JAMES GALLEGO, LEONARD CRAWFORD, NORBERT WITT, ROLAND BRECEK, THOMAS BORGE, and DOES 1to 10,

Defendants.

AND RELATED CROSS-ACTIONS

Case No. PC20200635

DEFENDANTS' OBJECTIONS TO EVIDENCE CITED BY PLAINTIFFS' IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Date:	December 13, 2024
Time:	8:30 a.m.
Dept.:	9
Action Filed:	December 16, 2020
Trial Date:	January 25, 2025

Pursuant to California Rules of Court, Rule 3.1354,, Defendants LAKE POINTE VIEW ROAD OWNERS ASSOCIATION fka GUADALUPE PROPERTY OWNERS ASSOCIATION, GINA HAYNES (erroneously sued as Gina Hayes), JAMES GALLEGO, LEONARD CRAWFORD, NORBERT WITT, THOMAS BORGE, and THE ESTATE OF ROLAND BRECEK ("Defendants") object to and hereby move to exclude portions of evidence and exhibits

1 submitted by Plaintiffs in support of their opposition in support of Plaintiffs' Opposition to
2 Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication as set
3 forth below.
4 Defendants respectfully request that the Court rule on each of the following objections
5 prior to ruling on Defendants' Motion for Summary Judgment or, in the Alternative, Summary
6 Adjudication. *Sambrano v. City of San Diego* (2002) 94 Cal.App.4th 225, 235-238.

7 **OBJECTION NO. 1- TO THE DECLARATION OF RICHARD NELSON**

8 **General Objections:**

9 Defendants object to the Declaration of Richard Nelson offered in support of Plaintiffs'
10 Opposition to Defendants' Motion for Summary Judgment or, in the Alternative, Summary
11 Adjudication, specifically paragraphs 4-22 therein, on the grounds that there is a lack of
12 foundation [Evid. Code §§ 402, 403], a lack of facts showing the declarant's personal knowledge
13 and competence to testify about the matters therein [Evid. Code §§ 702]; contains inadmissible
14 hearsay and multiple hearsay [Evid. Code §§1200(a) and (b), 1201, *Innovative Business*
15 *Partnerships, Inc. v. Inland Counties Regional Center, Inc*. (2011) 194 Cal.App.4th 623, 633;
16 *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1107 –
17 1108; *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 249 – 250]; Improper expert opinion
18 testimony [Evid. Code §801, *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal. 3d 863, 884;
19 *Carter v. City of Los Angeles* (1945) 67 Cal.App.2d 524, 528]; and Improper legal conclusions
20 [Evid. Code §801; Summers v. A. L. Gilbert Co. (1999) 69 Cal. App. 4th 1155, 1183-1184].

21 22 **Purported Evidence**	**Objection**	**Ruling**
23 24 25 1. Declaration of Nelson ("Nelson Decl."), ¶ 4	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); Relevance (Evidence Code Evid. Code §§ 351, 352); A party may not create a triable issue of fact through a self-serving declaration. *Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451.	☐ Sustained ☒ Overruled
26 27 28 2. Nelson Decl., ¶ 5	**Irrelevant** (Evid. Code §§ 351, 352); A party may not create a triable issue of fact through a self-serving declaration. *Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451.	☐ Sustained ☒ Overruled

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Purported Evidence	Objection	Ruling
	Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17, 77 Cal.App.4th 644, 653 (1999) ["To be 'material' for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the motion in some way."]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) ["A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial"]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,* 8 Cal.App.5th 350, 213 (4th Dist. 2017) ["A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact"].	
3. Nelson Decl., ¶ 6	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352).	☒ Sustained ☐ Overruled
4. Nelson Decl., ¶ 7	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ("affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'.")) Relevance (Evidence Code Evid. Code §§ 351, 352).	☐ Sustained ☒ Overruled
5. Nelson Decl., ¶ 8	**Lacks foundation** (Evid. Code § 403); Relevance (Evidence Code Evid. Code §§ 351, 352).	☐ Sustained ☒ Overruled
6. Nelson Decl., ¶ 9	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986)	☒ Sustained ☐ Overruled

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Purported Evidence	Objection	Ruling
	629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’.”]); Relevance (Evid. Code §§ 351, 352).	
7. Nelson Decl., ¶ 10	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’.”]); Relevance (Evid. Code §§ 351, 352).	☐ Sustained ☒ Overruled
8. Nelson Decl., ¶ 11	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’.”]); Relevance (Evid. Code §§ 351, 352); Hearsay (Evid. Code §1200).	☒ Sustained ☐ Overruled
9. Nelson Decl., ¶ 12	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’.”]); Relevance (Evid. Code §§ 351, 352). *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17*, 77 Cal.App.4th 644, 653 (1999) [“To be ‘material’ for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the motion in some way.”]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) [“A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial”]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,*	☒ Sustained ☐ Overruled

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Purported Evidence	Objection	Ruling
	8 Cal.App.5th 350, 213 (4th Dist. 2017) ["A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact"].	
10. Nelson Decl., ¶ 13	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352); Hearsay (Evid. Code §1200). *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17*, 77 Cal.App.4th 644, 653 (1999) ["To be 'material' for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the motion in some way."]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) ["A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial"]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,* 8 Cal.App.5th 350, 213 (4th Dist. 2017) ["A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact"].	☒ Sustained ☐ Overruled
11. Nelson Decl., ¶ 14	**Irrelevant** (Evid. Code §§ 351, 352). *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17*, 77 Cal.App.4th 644, 653 (1999) ["To be 'material' for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to	☐ Sustained ☒ Overruled

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Purported Evidence	Objection	Ruling
	the motion in some way.”]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) [“A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial”]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,* 8 Cal.App.5th 350, 213 (4th Dist. 2017) [“A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact”].	
12. Nelson Decl., ¶ 15	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’.”]); Relevance (Evid. Code §§ 351, 352); Hearsay (Evid. Code § 1200). *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17*, 77 Cal.App.4th 644, 653 (1999) [“To be ‘material’ for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the motion in some way.”]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) [“A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial”]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,*	☒ Sustained ☐ Overruled

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Purported Evidence	Objection	Ruling
	8 Cal.App.5th 350, 213 (4th Dist. 2017) ["A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact"].	
13. Nelson Decl., ¶ 16	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352). *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge 17*, 77 Cal.App.4th 644, 653 (1999) ["To be 'material' for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the motion in some way."]; *Perry v. Bakewell Hawthorne, LLC*, 2 Cal. 5th 536, 213 (Cal. 2017) ["A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial"]. *Christina C. v. County of Orange*, 220 Cal.App.4th 1371, 1379 (4th Dist. 2013) [Only material factual disputes bear any relevance; no amount of factual conflict upon other aspects of the case will preclude summary judgment.]; *Citizens for Odor Nuisance Abatement v. City of San Diego,* 8 Cal.App.5th 350, 213 (4th Dist. 2017) ["A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact"].	☒ Sustained ☐ Overruled
14. Nelson Decl., ¶ 17	**Irrelevant** (Evid. Code §§ 351, 352).	☐ Sustained ☒ Overruled
15. Nelson Decl., ¶ 18	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code	☐ Sustained

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Purported Evidence	Objection	Ruling
	§ 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352). A party may not create a triable issue of fact through a self-serving declaration. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451).	☒ Overruled
16. Nelson Decl., ¶ 19	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352). A party may not create a triable issue of fact through a self-serving declaration. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451).	☒ Sustained ☐ Overruled
17. Nelson Decl., ¶ 20	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352). A party may not create a triable issue of fact through a self-serving declaration. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451).	☐ Sustained ☒ Overruled
18. Nelson Decl., ¶ 21	**Lacks foundation** (Evid. Code § 403); **improper legal conclusion** (*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352). A party may not create a triable issue of fact through a self-serving declaration. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451.)	☐ Sustained ☒ Overruled
19. Nelson Decl., ¶ 22	**Lacks foundation** (Evid. Code § 403); **improper opinion testimony** (Evid. Code § 702); **improper legal conclusion**	☐ Sustained

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Purported Evidence	Objection	Ruling
	(*Hayman v. Block,* 176 Cal.App.3d (1986) 629, 638-39 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate facts'."]); Relevance (Evid. Code §§ 351, 352); A party may not create a triable issue of fact through a self-serving declaration. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451.)	☒ Overruled

OBJECTIONS TO DECLARATION OF MICHAEL THOMAS

Purported Evidence	Objection	Ruling
1. Declaration of Michael Thomas, Ex. A	**Irrelevant** (Evid. Code §§ 351, 352); Hearsay (Evid. Code § 1200).	☐ Sustained ☒ Overruled
2. Declaration of Michael Thomas, Ex. B	**Irrelevant** (Evid. Code §§ 351, 352); Hearsay (Evid. Code § 1200).	☐ Sustained ☒ Overruled
3. Declaration of Michael Thomas, Ex. C	**Irrelevant** (Evid. Code §§ 351, 352); Hearsay (Evid. Code § 1200).	☐ Sustained ☒ Overruled

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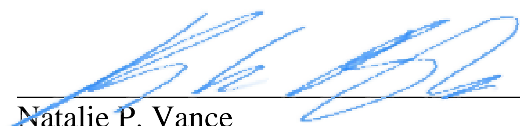
DATED: December 5, 2024

By: 

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LAKE POINTE VIEW ROAD OWNERS ASSOCIATION fka GUADALUPE PROPERTY OWNERS ASSOCIATION, GINA HAYNES (erroneously sued as Gina Hayes), JAMES GALLEGO, LEONARD CRAWFORD, NORBERT WITT, THOMAS BORGE, and THE ESTATE OF ROLAND BRECEK

<u>**[PROPOSED] ORDER**</u>

IT IS SO ORDERED.

DATED: December ___, 2024

____
JUDGE OF THE EL DORADO COUNTY
SUPERIOR COURT

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SACRAMENTO, CALIFORNIA 95814

PROOF OF SERVICE

Beland, et al. v. Lake Point View Road Owners Association, et al.
Case No. PC20200635

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 801 K Street, Suite 2100, Sacramento, California 95814.

On December 6, 2024, I served true copies of the following document(s) described as **DEFENDANTS' OBJECTIONS TO EVIDENCE CITED BY PLAINTIFFS' IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION** on the interested parties in this action as follows:

Michael W. Thomas
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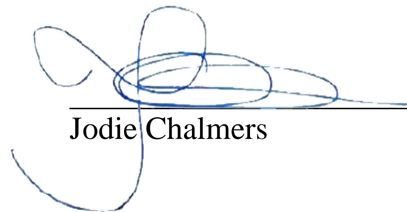
BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address jchalmers@klinedinstlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 6, 2024, at Sacramento, California.



Jodie Chalmers

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On August 23, 2024, Defendants filed and served a Notice of Motion for Summary Judgment or in the Alternative, Summary Adjudication, and supporting documents thereto. While there are multiple plaintiffs in this action, the motion is in reference only to those claims brought by Richard Nelson and Sandra Nelson. Therefore, for the avoidance of doubt, Richard and Sandra Nelson, without inclusion of the remining plaintiffs, will be collectively referred to herein as Plaintiffs.

Plaintiffs filed and served Plaintiff Nelson's Opposition to Defendants' Motion for Summary Judgment and/or Summary Adjudication, and all supporting documents thereto, on November 19th.

On December 6, 2024, Defendants filed their Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment or in the Alternative, Summary Adjudication and Defendants' Objections to Evidence Cited by Plaintiffs in Opposition to Defendants' Motion for Summary Judgment, or in the Alternative, Summary Adjudication.

Request for Judicial Notice

In support of their opposition to the motion, Plaintiffs filed a Request for Judicial Notice asking the court to take notice of the 1986 CC&Rs. Defendants have not opposed the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Ev. Code § 452(h).

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

Here, the 1986 CC&Rs were recorded at the time they were put into place and therefore the court does find that their contents are not reasonably subject to dispute.

Additionally, Plaintiffs have complied with the requirements of Section 453, therefore the court is compelled to grant the judicial notice request. As such, Plaintiffs' request is granted, and the court hereby takes judicial notice of the 1986 CC&Rs.

Evidentiary Objections

The court rules on the evidentiary objections raised by Defendants as indicated on the attached pdf.

Motion for Summary Judgment/Adjudication

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

The moving party bears the initial burden of making a prima facie case for summary judgment. White v. Smule, Inc., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018). Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010). "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850.

Here, the question presented is whether Plaintiffs have standing to bring their claims against Defendants when they no longer own their Lake Point View property. After reviewing the filings of the parties as outlined above the court finds this question to be answered in the affirmative.

An individual's standing to bring suit is a threshold question in all matters, and one that has been heavily litigated. *See* Cal. Civ. Pro. § 367 ("Every action must be prosecuted in the name of the real party in interest…"). Specifically, courts have addressed the issue of whether or not an individual whose property has been wrongfully damaged by another

loses the right to recover for that damage where he or she has sold the property at the time of suit. *See* Jasmine Networks, Inc. v. Sup. Ct., 180 Cal. App. 4th 980 (2009). In fact, the court in *Jasmine Networks, Inc. v. Sup. Ct.* provided a detailed summary of case law on the issue and found definitively that "…none of them casts the slightest doubt on the central premise that a right of action for damage to property is distinct from the title to the property, and from any right in the property, and that the transfer of the latter does not by itself effect a transfer or diminution of the former." *Jasmine Networks, Inc.,* at 995.

Here, Plaintiffs allege that during the time they owned the Lake Pointe View property they suffered extensive monetary damages. The law is well settled that simply by selling the property they did not transfer their right to bring suit and recover for those damages. The right to sue is not "analogous to a covenant running with the land, but a distinct form of *personal* property in its own right." *Jasmine Networks, Inc.*, at 994 *citing* Vaughn v. Dame Const. Co., 223 Cal. App. 3d 144 (1990)(emphasis in original).

Defendants cite case law which stands for the proposition that directors of an HOA owe fiduciary duties to the association and its members. They argue that there is no duty owed to nonmembers which, as the Plaintiffs stand today, they are nonmembers. The fault with Defendants' argument, however, is they are failing to look at the time the alleged injury occurred. In fact, it appears the parties are in agreement that Plaintiffs were property owners, and therefore members of the association, during the relevant time period.

Additionally, Defendants provide no law on point which stands for the proposition that when an individual, who is a property owner, sells that property they sell along with it their right to bring suit to recover damages for injuries that allegedly occurred while they owned the property. Defendants' reliance on *Martin v. Bridgeport Community Ass'n*, 173 Cal. App. 4th 1024 (2009) is misplaced. *Martin* addressed the issue of whether or not tenants living at the property could enforce the applicable CC&Rs. The tenants in that matter were not, and never had been, property owners. In the matter at hand, Plaintiffs were property owners who were bound by the CC&Rs at the relevant time period when the alleged injury occurred.

Because Defendants have not provided any information that would establish that one or more of the requisite elements of standing has been conclusively disproved or cannot be established, they have failed to meet their burden of proof for summary judgment or adjudication. Accordingly, the motion is denied.

TENTATIVE RULING: PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE OF THE 1986 CC&RS IS GRANTED. RULINGS ON DEFENDANTS' EVIDENTIARY OBJECTIONS ARE AS

ATTACHED. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

10.	24CV1130	DAWSON v. EL DORADO IRRIGATION DISTRICT et al
Demurrer		

This case involves a lawsuit filed by Elizabeth Dawson ("Plaintiff") against her prior employer El Dorado Irrigation District ("EID"), Jose Perez (Human Resources Manager)("Perez"), and Jim Abercombie (Director of Engineering)("Abercrombie") (collectively "Defendants") for allegations of gender discrimination, harassment, retaliation, and failure to prevent discrimination, harassment, and/or retaliation.

<u>Standard of Review - Demurrer</u>

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

The Complaint includes 4 causes of action: (1) gender discrimination; (2) harassment; (3) retaliation; and (4) failure to prevent discrimination, harassment, and/or retaliation.

<u>Defendants demur as follows:</u>

1. To the second cause of action against all Defendants for harassment because Plaintiff does not allege sufficient facts to constitute illegal harassment.
2. To the first, third, and fourth causes of action against Perez and Abercrombie (collectively "the individual Defendants") because those causes of action do not list the defendants against whom those claims are brought, making them fatally uncertain.
3. To the first, third, and fourth causes of action against the individual Defendants because they fail to state facts sufficient to constitute causes of action against the individual Defendants as non-employers.

<u>Meet and Confer Requirement</u>

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.

The Court finds that there have been sufficient meet and confer efforts amongst the parties.

Argument

Harassment

Defendants demur to the second cause of action for harassment because it does not allege sufficient facts to constitute illegal harassment, all of the alleged conduct is within the supervisory and personnel management duties of the individual Defendants, and Plaintiff failed to allege any connection between the alleged harassing conduct and her sex or gender.

It is unlawful for “an employer . . . or any other person, because of [a protected class] to harass an employee . . . . Harassment of an employee, . . . shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.” (Cal. Gov. Code 12940(j)(1)).

To establish a prima facie case of a hostile work environment, [Plaintiff] must show that (1) she is a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her protected status; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. (*Ortiz v. Dameron Hosp. Assn.* (2019) 37 Cal. App. 5th 568, 581). Put another way, “an employee claiming harassment based upon a hostile work environment must demonstrate that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex.” (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 462).

Defendants argue that Plaintiff fails to allege severe or pervasive conduct to constitute cognizable harassment, which occurred over an approximately 6-year-3-month period, and included “common workplace annoyances and/or mere offensive utterances.” (Demurrer, p.5, lines 7-8).

Defendants also argue that all of the alleged conduct is within the supervisory and personnel management duties of the individual Defendants and cannot serve as a basis for harassment. Defendants argue that conduct arising out of necessary management duties cannot form the basis of a harassment claim a matter of law. (*Reno v. Baird* (1998) 18 Cal.4th 640, 645-647). Actions that are the “type necessary to carry out the duties of business and personnel management” do not come within the meaning of harassment. (*Janken v. GM Hughes Elecs.* (1996) 46 Cal.App.4th 55, 65). These include “commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like . . . .” (*Id.*)

Lastly, Defendants argue that Plaintiff failed to allege any connection between the purported harassing conduct and her sex or gender. the alleged harassment must have occurred “because of” Plaintiff’s “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decision making, or veteran or military status…” (Cal. Gov. Code § 12940(j)(1)). Defendants argue Plaintiff has not alleged she was harassed because of her membership in a protected class: not in Plaintiff’s allegations specifically regarding harassment, (FAC ¶¶ 35-44, 66-76), nor anywhere else in the FAC. Defendants continue, arguing that Plaintiff makes a general claim that she is a woman (FAC ¶ 57), but conspicuously absent from the allegations under the Second Cause of Action for Harassment, paragraphs 66-76, is even a conclusory allegation that Plaintiff was harassed because of her membership in a protected class.

Plaintiff argues that EID is liable for the harassing behavior of the individual Defendants, because Perez and Abercrombie were supervisors. The Court does not read the Defendants to be disputing this principle, but instead arguing that the conduct of Perez and Abercrombie was not harassing and was part of their managerial and supervisory duties.

Plaintiff next argues that California law recognizes that harassment can encompass a wide range of behaviors, including those that create a hostile work environment and that this can include conduct that is not explicitly sexual but is based on gender, such as ridicule, insult, or other actions that undermine an employee's well-being and ability to perform their job. (*Miller v. Department of Corrections*, 36 Cal. 4th 446; *Thomas v. Regents of University of California*, 97 Cal. App. 5th 587. Plaintiff argues that the totality of the circumstances is considered when determining whether an environment is hostile or abusive. *Miller v. Department of Corrections*, 36 Cal. 4th 446.

Discrimination, Retaliation, and Failure to Prevent

Plaintiff admits that these causes of action should be against EID only, and that the individual Defendants shall be dismissed. The court therefore sustains the demurrer without leave to amend as to the first, third, and fourth causes of action as to the individual defendants.

***

The Court finds that this case is most analogous to *Doe v. Dep't of Corr. & Rehab.* (2019) 43 Cal.App.5th 721, where the Plaintiff made similar allegations of his supervisor's conduct. In that case, the Court of Appeal upheld the trial court's granting of summary judgment. However, we are only at the demurrer stage, and in reading the Complaint liberally, the demurrer cannot be sustained.

TENTATIVE RULING #10:

THE COURT OVERRULES THE DEMURRER AS TO THE SECOND CAUSE OF ACTON. THE COURT SUSTAINS THE DEMURRER WITHOUT LEAVE TO AMEND AS TO THE FIRST, THIRD, AND FOURTH CAUSES OF ACTION AS TO THE INDIVIDUAL DEFENDANTS.

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

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

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

11.	**22CV1379**	**GONZALEZ v. GENERAL MOTORS, LLC**
Motion to Tax		

Defendant filed this Motion to Tax in response to Plaintiff's Memorandum of Costs ("MOC"). The Notice does not comply with Local Rule 7.10.05. Consumer Law Experts, P.C. ("Counsel") demanded $2,898.72 in costs for a Song-Beverly claim. Defendant argues that the case did not go to trial, did not raise any complex or novel issues, and the Counsel did not present any evidence to support its claim for $2,898.72 besides the MOC itself. Defendant argues that of the amount claimed, $1,004.75 of costs are without merit and represent Counsel's standard tactics to increase the billable total.

Costs are given only by statutory direction. (*Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal.2d 469, 477.) Code of Civil Procedure § 1032 provides for recovery of costs by a prevailing party. Section 1033.5(a), in turn, lists allowable costs, and section 1033.5(b) lists costs that are not allowable.

> In ruling upon a motion to tax costs, the trial court's first determination is whether the statute expressly allows the particular item and whether it appears proper on its face, if so, the burden is on the objecting party to show the costs to be unnecessary and unreasonable. Where costs are not expressly allowed by statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary.
>
> (*Foothill-De Anza Comm College Dist V Emerich* (2007) 158 Cal.App.4th 11, 29.)

Defendant argues that the MOC should be stricken in its entirety, because Counsel presents no evidence to support its claim for $2,898.72 in costs – no invoice, receipt, or documentation. Defendant then specifically attacks $1,004.75 of the costs for being expenses not actually or reasonably incurred.

Plaintiff responds arguing that a buyer prevailing in an action brought pursuant to Song-Beverly Consumer Warranty Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, included attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." Civ. Code §1794(d).

Plaintiff asserts that Defendant's Motion argues Plaintiff should be barred from recovering the costs requested in Plaintiff's Memorandum of Costs because they are prohibited under California Code of Civil Procedure §1033.5 but that the operative statute here is California Civil Code §1794(d) which is broader, more inclusive, and allows Plaintiff to recover expenses in addition to those costs and expenses enumerated under Code of Civil Procedure §1033.5. The

Court agrees that California Civil Code §1794(d) is the operative statute in this matter. It provides: (d) If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action. (Ca. Civ. Code §1794(d))

Plaintiff argues that "[i]f items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary." *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1266. Plaintiff argues that Defendant did not meet their burden in proving these charges were not reasonable or necessary.

Defendant argues it should not be required to reimburse Counsel $219.95 for jury fees since the case never went to trial. Plaintiff argues that the jury fees had to be posted on or before the date scheduled for the initial case management conference, pursuant to CCP §631(c), and therefore that cost was reasonably incurred. The Court agrees with Plaintiff and allows this expense.

Defendant argues it should not be required to reimburse Counsel $65.00 for Notice of Change of Address, as that is standard business overhead. Plaintiff argues this was reasonably necessary to conduct the litigation to ensure proper service. The Court disagrees with Plaintiff on this cost and finds it is disallowed.

Defendant argues that it should not be required to reimburse Counsel $219.80 for courtesy copies, as they were unnecessary and not required. Plaintiff argues that the courtesy copies were filed by Plaintiff in compliance with the Court's request, pursuant to Local Rule 4.00.02. The Court agrees with Plaintiff and allows this expense.

Defendant argues that it should not be required to reimburse Counsel $500.00 of anticipated costs for "TBD by Motion" and "Court reporter fees" because Plaintiff did not yet incur those costs. Plaintiff does not dispute this amount and therefore it is disallowed.

The Court reviewed Defendant's reply, and it does not change the Court's analysis. Based on the evidence presented, the Court reduces the costs claimed by $565.00, and hereby awards $2,333.72 in costs to Plaintiff.

TENTATIVE RULING #11:

1. **COSTS CLAIMED BY PLAINTIFF REDUCED BY $565.00.**
2. **PLAINTIFF AWARDED $2,333.72 IN COSTS PAYABLE BY DEFENDANT.**

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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