January 24, 2025
Dept. 9
Tentative Rulings

1.	**23CV1751**	**WEBSTER v. WEBSTER**
Motion		

The Notice does not comply Local Rules 7.10.05.

Plaintiff Adrian D. Webster's ("Decedent" or "Plaintiff")) Attorney filed this Motion to Allow Successor in Interest to Continue in this Matter Upon the Plaintiff's Death ("Motion"). The Motion states that Plaintiff died October 28, 2025, but presumably it should state 2024. Adrian L. Webster, Decedent's son, is the Plaintiff's Successor in Interest and the Successor Trustee of the Decedent's Trust. Judgment was entered against Defendants Timothy C. Webster and Megan Quinonez Webster on October 18, 2024.

On motion after the death of a person who commenced an action or proceeding, the court shall 7 allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest. California Code of Civil Procedure § 377.31.

There is no opposition.

TENTATIVE RULING #1:

MOTION IS GRANTED.

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2.	**23CV0157**	**RUSSI v. FOLSOM LAKE FORD**
Motion for Leave		

Defendants Folsom Lake Ford, Inc. and Daniel Wade Frye (collectively "Defendants") bring this Motion for Leave to File First Amended Answer to Plaintiff's Complaint. This matter arises out of a motor vehicle accident that occurred on February 8, 2021 on westbound US 50 in Placerville. Plaintiff Russi filed a Complaint on January 31, 2023, alleging negligence against Defendants. On May 16, 2023, Defendants filed an Answer. After completing the depositions of Plaintiff and Defendant Frye, an affirmative defense was developed. Defendant explains that due to error, an amended Answer was not filed by counsel and Plaintiff's counsel would not stipulate to allow Defendants the chance to amend their answer. This matter is set for a hearing on Defendants' Motion for Summary Judgment on February 28, 2025. Defendants' Motion states trial does not commence until March 18, 2025, but it has since been continued to July 29, 2025.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading[.]" Cal. Code Civ. Proc. §473(a)(1); see also Cal. Civ. Proc. Code §576. "The objective, of course, is to encourage trial on the merits whenever possible." *Foot's Transfer v. Superior Court* (1980) 114 Cal. App. 3d 897, 901. The policy favoring amendment is so strong that denial of leave to amend can rarely be justified. See e.g. *Morgan v. Superior Court* (1959) 172 Cal. App. 2nd 527, 530; *Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal. 3d 290, 296.

Defendants argue that in allowing their proposed amendment, there is no prejudice to Plaintiff due to the trial being several months away, and because the amendment does not alter the facts of the case. Defendants did attempt to meet and confer with Plaintiff prior to filing the Motion. A copy of the proposed Amended Answer is attached as Exhibit A to the Declaration of William A. Jenkins.

Plaintiff argues that the sudden emergency doctrine was a viable defense that Defendants had knowledge of since prior to the inception of the case but that they have intentionally delayed bringing it. Plaintiff's first argument that Defendants' Motion does not comply with California Rules of Court Rule 3.1324 is moot, with a simple reading of the Declaration of William A. Jenkins.

Plaintiff next argues that Defendants are guilty to unreasonable and inexcusable delay in bringing the Motion. Plaintiff argues that the facts were known to counsel since the beginning, and prior to the filing of even the initial Answer. Plaintiff next asserts that she will be prejudiced by allowing the amendment because almost all discovery has been completed and Defendant Frye's vehicle is no longer available.

Based on the facts of the case and the timeline of trial, the Court is not persuaded that the alleged prejudice to Plaintiff outweighs Defendants' right to amend their Answer.

TENTATIVE RULING #2:

1. **MOTION FOR LEAVE TO AMEND THE ANSWER IS GRANTED.**
2. **THE AMENDED ANSWER MUST BE FILED WITHIN 10 DAYS OF THIS ORDER.**

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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3.	**24CV0536**	**RANDOLPH v. AMERICAN HONDA MOTOR CO.**
Motion to Compel		

Defendant submits this Motion to Compel Vehicle Inspection and Request for Sanctions. According to the papers, Plaintiff provided dates which were acceptable to Defendant. In its Reply, Defendant still requests an Order requiring production of the vehicle and for sanctions incurred as a result of the Motion. Plaintiff argues that Defendant failed to engage in sufficient meet and confer efforts.

While the e-mail correspondence between the parties is attached to the pleadings and reflects significant delays from Plaintiff in responding, the Court finds that Defendant filed its motion on December 16, 2024 more than motion after the parties' last apparent communication on this issue on November 14, 2024. The court finds it would have been reasonable for Defendant to attempt to reach Plaintiff by phone (preferably) or at least by e-mail prior to filing the motion to make one last effort, possibly with a deadline to respond prior to the filing of a formal motion. This is particularly the case since as things played out the parties eventually agreed on the date. While Plaintiff could have responded sooner, Defendant also could have engaged in more efforts prior to filing the motion.

Due to its failure to sufficiently meet and confer, the court denies the motion. At the same time, the court finds that Plaintiff's delays are the primary reason for Defendant's decision to file a motion, and therefore the imposition of sanctions against Defendant would be unjust.

TENTATIVE RULING #3:

1. **MOTION DENIED.**
2. **SANCTIONS DENIED.**

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4.	**22CV1608**	**CRAMER v. NORTON**
Sanctions; Demurrer; Motion to Strike, etc.		

First American Title Co.'s Motion to Strike FAC

On September 4, 2024, defendant First American Title Company ("First American") filed a motion to strike the first-amended complaint ("FAC") in its entirety on the grounds that: (1) plaintiff filed the FAC in violation of Code of Civil Procedure section 472, subdivision (a) where defendant Rene Norton ("Norton") filed an answer to the original complaint and plaintiff did not obtain leave to amend; (2) the FAC does not comply with California Rules of Court, rule 2.112 or Local Court Rule 7.10.03 because the causes of action are not numbered and do not identify the party or parties to whom they are directed; and (3) the portion of the FAC titled "ON INFORMATION AND BELIEF" is indecipherable.

On January 16, 2025, First American filed a notice of non-opposition to its motion to strike.

Pursuant to Evidence Code section 452, subdivision (d), the court grants First American's unopposed request for judicial notice of: (1) plaintiff's complaint filed November 14, 2022; (2) Norton's answer to complaint filed February 9, 2023; and (3) plaintiff's FAC filed June 17, 2024. Pursuant to Evidence Code section 452, subdivision (h), the court grants First American's unopposed request for judicial notice of the fact that the court's file does not reflect that Norton consented to the filing of the FAC or that plaintiff obtained leave of court to file the FAC.

Under Code of Civil Procedure section 435, the court may strike a pleading that is filed without leave of court when leave is required. (See *Loney v. Superior Court* (1984) 160 Cal.App.3d 719, 721–724 [cross-complaint filed without leave of court].) As relevant here, Code of Civil Procedure section 472, subdivision (a) allows a party to amend a complaint once without leave of court before the defendant's answer, demurrer, or motion to strike is filed. On November 14, 2022, plaintiff filed his original complaint against Norton and Does 1 through 10. On February 9, 2023, Norton filed an answer to the complaint. On June 17, 2024, plaintiff filed the FAC[1] against Norton and First American without leave of court. Therefore, the FAC is an unauthorized pleading. (Code Civ. Proc., § 472, subd. (a).) The court grants First American's motion to strike.

Plaintiff may file a "Doe Amendment" under Code of Civil Procedure section 474 and/or motion for leave to amend the original complaint under Code of Civil Procedure sections 473 and 576.

[1] The FAC alleges that "Doe number one is First American Title Company." Additionally, the FAC asserts causes of action for "encroachment trespass" and breach of contract.

First American Title Co.'s Demurrer to FAC

Because the court grants First American's motion to strike the FAC, First American's demurrer (filed September 4, 2024) is moot.

Norton's Demurrer to FAC

Because the court grants First American's motion to strike the FAC, Norton's demurrer (filed October 18, 2024) is moot.

Sanctions under CCP section 128.5

At the November 15, 2024 hearing, on the court's own motion it set a hearing for sanctions against Plaintiff under CCP section 128.5 for filing a frivolous motion for sanctions on October 23, 2024. Under the section 128.5, "'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." The court gave Plaintiff notice of the motion and the hearing date at the November 15, 2024 hearing and afforded him an opportunity to file a response following the timelines for a standard civil motion. On January 2, 2025, due to judicial unavailability, the motion was continued to January 24, 2025.

Upon review of the file, Plaintiff did not file a response to the court's motion. Upon review of the pleadings related to the October 23, 2024 motion, the court finds that the motion was frivolous as it was totally and completely without merit, including lacking a substantial factual basis for the allegations contained therein. The court finds good cause to sanction Plaintiff by ordering him to pay a portion of the attorney's fees incurred by the Defendants in opposing the motion. The court finds that limited the sanction to only portion of the fees is sufficient to deter future such conduct but advises Plaintiff that further frivolous motions may be met with larger sanctions if appropriate.

The court orders Plaintiff to pay each Defendant Norton $150 and Defendant First American Title Co. $150 as and for reasonable attorney's fees as sanctions under CCP section 128.5, payable by February 28, 2025.

Motion to recuse

The court orders the parties to appear to address how to proceed on Plaintiff's motion to recuse.

The court notes that it any of the parties wish to contest any portion of the tentative ruling aside from the motion to recuse they must request oral argument; otherwise, the court is inclined to adopt the tentative ruling per local rules.

TENTATIVE RULING #4:

1. **DEFENDANT FIRST AMERICAN TITLE COMPANY'S MOTION TO STRIKE THE FAC IS GRANTED.**

2. **DEFENDANT FIRST AMERICAN TITLE COMPANY'S DEMURRER TO THE FAC IS MOOT.**
3. **DEFENDANT RENE NORTON'S DEMURRER TO THE FAC IS MOOT.**
4. **THE COURT ORDERS PLAINTIFF TO PAY EACH DEFENDANT NORTON $150 AND DEFENDANT FIRST AMERICAN TITLE CO. $150 AS AND FOR REASONABLE ATTORNEY'S FEES AS SANCTIONS UNDER CCP SECTION 128.5, PAYABLE BY FEBRUARY 28, 2025.**
5. **APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JANUARY 24, 2025, IN DEPARTMENT 9 FOR PLAINTIFF'S MOTION TO RECUSE UNDER CODE OF CIVIL PROCEDURE SECTIONS 170.1 AND 170.6.**

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5.	**PC20200596**	**MALONE v. WEAHUNT**
Attorney's Fees		

Plaintiff filed a motion for attorney's fees, which was continued to January 24, 2025 to afford Plaintiff an opportunity to supplement her motion and to allow Defendant to thereafter respond. On January 15, 2024 and again on January 21, 2025, Defendant Verniest filed a request for an extension indicating that Defendant Weahunt had significant medical issues preventing him from filing a substantive response. Upon review of the file, there is no indication that these pleadings of Defendant were served on Plaintiff. As such, the court declines to act on them ex parte. Even if the court were to grant a continuance, the pleadings do not specifically request an amount of time for a continuance.

Balancing the interest of Plaintiff in finality with the rights of Defendant Weahunt to be heard, the court orders the parties to appear, which may be via remote appearance if a request is submitted to the court, to determine how to proceed.

TENTATIVE RULING #5:

APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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6.	**24CV0486**	**RUTHANNE-SHADDOCK v. STRYKER**
Motion for Leave		

The Motion does not comply with Local Rule 7.10.05.

Defendants request leave to file a Cross-Complaint in this action to assert causes of action related to the incident that is the subject of the Complaint. The Complaint was filed on March 12, 2024, and Defendants filed an Answer on May 1, 2024. At the Case Management Conference on October 29, 2024, trial was set for November 4, 2025.

Code of Civil Procedure § 426.50 provides:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

Because this motion is not made within the time limitations set by Code of Civil Procedure §§ 428.50(a) and (b), leave of the court to file a Cross-Complaint is required. Leave may be granted in the interest of justice at any time during the course of the litigation. Code of Civil Procedure, § 428.50(c).

Proof of service of notice of the motion by electronic mail on December 9, 2024, is attached to the motion. The motion is unopposed.

A Declaration of John J. Immordino, dated December 6, 2024, declares that the Cross-Complaint was not filed prior to trial setting due to an oversight, but that the Court was aware of the need to file the Cross-Complaint.

TENTATIVE RULING #6:

MOTION FOR LEAVE TO FILE CROSS-COMPLAINT 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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7.	**23CV1153**	**HIGH HILL RANCH v. ALTER**
Sanctions		

The Notice does not comply with Local Rule. 7.10.05.

Defendant and Cross-Complainant Michael E. Alter ("Alter") submits this Motion for Sanctions against cross-Defendants High Hill Ranch, LLC, Jerry Visman, and Kyle Bridgeman (collectively "High Hill"). The Court entered a preliminary injunction on September 17, 2024. Alter argues that within two months of that Order, El Dorado County officials cited High Hill on three different Saturday night events, and that High Hill has been cited for violating the County noise ordinance at six of its last thirteen events. Alter is seeking monetary sanctions against each cross-Defendant under California Code of Civil Procedure § 177.5. Specifically, Alter requests that the Court impose the statutory maximum of $1,500 in sanctions to each cross-Defendant for each of the three violations.

High Hill opposes, first arguing that Alter's request under § 177.5 is improper because it is meant to give courts a mechanism to enforce compliance with procedural court orders and that Alter has not provided any case law where the court has issued sanctions under § 177.5 for violation of a preliminary injunction. Next, High Hill argues that if Alter reads "including" on the Order to mean High Hill is subject to the express decibel limits and another other limit, then the Order is ambiguous and therefore invalid. High Hill argues that the decibel limits included in the Order were specifically negotiated and that High Hill could not knowingly violate any limit not stated in the Order. High Hill argues that the evidence submitted by Alter shows that High Hill is complying with the Order, because the relevant decibel readings in the Declaration of Alter from after September 17 are below the limits expressly set forth in the Order. Lastly, High Hill argues that Alter failed to provide any analysis of how any of the individual cross-Defendants knowingly violated the Order, and that because Jerry Visman is now deceased, he cannot knowingly violate any court order.

Of note, Alter submits evidence from the County of El Dorado, which High Hill objects to for lacking foundation and containing layers of hearsay.

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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

8.	22CV1463	WALLACE v. ORION MANAGED SERVICES
Motion for Approval of Settlement		

The Motion does not comply with Local Rule 7.10.05.

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit 1 to Declaration of Jonathan Melmed, dated December 5, 2024.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$82,550.00
Attorney's Fees (not to exceed) one third of Gross Settlement Amount	$27,516.67
Litigation Costs (not to exceed)	$10,162.94
Administrator Costs (not to exceed)	$3,000.00
Payment to Labor and Workforce Development Agency	$25,777.79
Plaintiff's Service Award (one named Plaintiff)	$7,500.00
Net Settlement Amount:	$8,592.60

Individual Settlement Payments would be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. There are approximately 211 current and former employees in the fund. While the Motion and Declaration spend extension time detailing the alleged reasonableness of the attorney's fee request, there is no mention as to the average payment to the employees, nor the highest payment. The other employees are not able to opt out of the settlement. The Court requests confirmation as to whether Defendant will pay the employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages.

The Settlement Administrator will be responsible for mailing out notices to Class Members, making reasonable efforts to locate Class Members if the mailed notices are returned, managing payments and issuing appropriate IRS forms.

There were three attorneys working on behalf of Plaintiff. The first, billed 12 hours at a rate of $777.00 per hour for a total of $9,324.00, the second, billed 37.5 hours at a rate of $538.00 for a total of $20,175.00, and the third (with only 1 year of experience) billed 13.1 hours at a rate of $437.00 for a total of $5,724.70. The paralegal billed 1.5 hours at a rate of $250.00 for a total of $375.00, the first legal assistant billed 63.8 hours at a rate of $200.00 for a total of

$12,760.00, and the other legal assistant billed 3 hours at a rate of $150.00 for a total of $450.00.

Court approval of a class action settlement is governed by California Rules of Court, Rule 3.3769.

TENTATIVE RULING #8:

APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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9.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS**
Trial Setting		

TENTATIVE RULING #9:

APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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10.	**PC20200378**	**MITCHELL v. NEJATIAN**
Motion to Amend Judgment		

The Motion does not comply with Local Rule 7.10.05.

After trial, the jury awarded Nejatian $2 million for total economic loss and Mitchell $520,000 for total economic and noneconomic loss. The Court issued a Judgment on May 22, 2024, which was entered on August 9, 2024. On November 15, 2024, the Court awarded Mitchell $231,728.20 in attorney fees and costs.

The net judgment rule, applied in Nejatian's motion for attorney's fees, is instructive here. Under the rule relating to the recovery of attorney's fees in an action on contract providing for the prevailing party's recovery of attorney fees, if both parties prevail on affirmative claims the party with a net judgment in its favor is the prevailing party and the party entitled to attorney's fees. (*Hughes Tool Co. v. Max Hinrichs Seed Co.* (1980) 112 Cal.App.3d 194.) Just as Mitchell cannot be a prevailing party for attorney's fees purposes because Nejatian recovered $1,711,728.20 more than Mitchell recovered, Mitchell cannot not be a judgment creditor under the single judgment entered in this case because even after credit for her $520,000 award, she still owes Nejatian $1,711,728.20.

Nejatian respectfully requests that the Court order the original Judgment entered on August 9, 2024, amended to now include the costs and attorney fees awarded to Nejatian by the Court's Order dated August 15, 2024, and apply the $520,000 credit to reduce Nejatian's gross judgment of $2,231,728.20 to a net judgment of $1,711,728.20. ($2 million, less the $520,000 offset/credit, plus $231,728.20 attorney's fees and costs.)

The Motion is unopposed.

TENTATIVE RULING #10:

MOTION TO AMEND JUDGMENT IS GRANTED.

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11.	**PC20190656**	**AFRICA v. LENNAR HOMES OF CALIFORNIA**
Motion to Dismiss		

The Motion does not comply with Local Rule 7.10.05.

Defendant brings this Motion to Dismiss based on Plaintiffs' failure to prosecute their claim. Plaintiffs filed their First Amended Complaint on January 7, 2020, and while the case is stayed to allow the parties to complete the SB800 procedures, Defendants argues that the Plaintiffs have failed to engage in litigation r further their claims in any way. Defendants argue that counsel has been nonresponsive, and the last communication from Plaintiffs' counsel was on May 11, 2023.

Under California Code of Civil Procedure ("CCP") § 583.410 et seq., the Court may, in its discretion, dismiss an action for delay in prosecution. CCP § 583.420 provides that the Court may not dismiss an action for delay in prosecution, except where one of the following conditions has occurred, including where the action has not been brought to trial within three years after the action is commenced against the defendant. The California Rules of Court, Rule 3.1342 sets forth a number of factors the court is to consider when determining whether to grant a motion for discretionary dismissal.

Defendant argues that even while a case is stayed, the court can dismiss for failure to prosecute. *Van Keulen v. Cathay Pacific Airways, LTC.* (2008) 162 Cal.App.4th 122, 125 (where the court affirmed the lower court's dismissal of a case that was stayed, holding that if the court found it appropriate to do so under the circumstances that the action could be dismissed under CCP § 583.410).

The Motion is unopposed.

TENTATIVE RULING #11:

MOTION TO DISMISS 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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12.	**24CV1743**	**BRIZENDINE v. GEORGE**
Motion for Trial Preference		

The Notice does not comply with Local Rule 7.10.05.

The parties in this case are co-owners of a piece of residential real property. The Complaint was filed on August 13, 2024, and a General Denial was filed on December 23, 2024. Plaintiff filed this Motion for Trial Preference based on California Code of Civil Procedure § 36(a), which provides preference to a civil action when a party is 70 years or older, if the party has a substantial interest in the action as a whole and the health of the party warrants preference to prevent prejudicing the party's interest in the litigation.

Plaintiff is 77 years old and suffers from COPD. She of course has a substantial interest in the action, since she is the co-owner of the property. The Motion is unopposed.

TENTATIVE RULING #12:

1. **MOTION GRANTED.**
2. **APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE TO SELECT TRIAL DATES.**

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

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13.	PC20190436	BAUGH v. GREENVIEW ASSETS
Motion for Leave		

The Motion does not comply with Local Rule 7.10.05.

Plaintiffs Randy and Corbie Baugh (collectively "Plaintiffs") request leave to file their Second Amended Complaint against Defendants and Cross Complainants David L. Kaufman and Kathryn J. Kaufman, individually and as co-trustees of the Kaufman Dynasty Nevada Trust Dated July 18, 2015 and Greenview Assets, LLC (collectively "Defendants"). The First Amended Complaint was filed on September 24, 2019, and Defendants' First Supplemental Cross-Complaint was filed February 3, 2023. Plaintiffs argue that granting leave to amend will not prejudice any party because the Phase 2 trial is not scheduled until September 9, 2025.

After discovery and trial, Plaintiffs are seeking to allege newly discovered claims of fraud and misrepresentation against the Defendants. The causes of action are based on the same facts, injuries, and incidents alleged in the original Complaint, but also alleges facts and circumstances that were discovered only after the filing of the First Amended Complaint. Exhibit A to the Declaration of Terry J. Mollica contains a copy of the proposed Second Amended Complaint.

Code of Civil Procedure ("CCP") § 473 grants courts with broad discretion to allow amendment of a pleading at any stage of the action:

> 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.

Unless prejudice to the opposing party is shown, there is a strong policy favoring granting such motions so that questions litigated between the parties can be decided on the merits. (Po*sz v. Burchell* (1962) 209 Cal.App.2d 324, 333; see also *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565).

Plaintiffs argue that the Court may permit amendments to the pleadings on the eve of trial or even during trial. (Code of Civil Procedure §§ 473(a)(1), 576; *Norager v. Nakamura* (1996) 42 Cal.App.4th 1817, 1819; see also Weil & Brown, California Prac. Guide: Civil Procedure Before Trial (Rutter 2006), Ch. 6). However, this case is a bit different considering Phase 1 of the trial already occurred.

Defendants oppose the Motion, arguing that the facts in evidence from the Phase 1 trial show there was no concealment or fraudulent conduct by the Kaufmans, and therefore, that the record in Phase 1 contradicts their proposed Second Amended Complaint. Defendants further argue that Plaintiffs may not force the Defendants to relitigate issues from Phase 1, especially when the facts do not support the proposed amendment. (*Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1090-91.)

To survive a demurrer—to state a claim on which relief may be granted—the Baughs must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (*Hamilton v. Greenwich Investors XXVI, LLC (*2011) 195 Cal.App.4th 1602, 1614 (internal quotes omitted); *Lazar v. Sup.Ct. (Rykoff-Sexton, Inc.)* (1996) 12 Cal.4th 631, 645; 5 Witkin, California Procedure (6th ed. 2021), Pleading § 707.) Defendants argue that not only is specificity absent, but the statements made to the Court in support of the amendment constitute argument and not evidence.

In the court's own ruling after the Phase 1 trial, as noted by Plaintiffs, the court withheld determination as to the factual disputes between the parties related to their actions and communications in July 2019. This includes any determination as to whether Defendants committed fraud or misrepresentation related to the presentation of offers to purchase the property or related issues – that is, in contrast to Defendants' position, the court did not find that the evidence at the Phase 1 trial contradicts the proposed Second Amended Complaint. The court made no finding one way or another.

Further, given the liberal public policy in favor of granting leave to amend, the court grants Plaintiffs' motion.

TENTATIVE RULING #13:

MOTION FOR LEAVE TO AMEND 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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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.

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14.	24CV0932	TD BANK USA v. PILLON
Motion for Judgment on the Pleadings		

This matter involves common counts. Plaintiff brings this Motion for Judgment on the Pleadings.

Meet and Confer

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

The Langedyk Declaration notes that the Defendant did not provide a phone number on the responsive pleadings, but one was found on the account notes. The voicemail provided Defendant's name, so counsel left a message. He also indicates that a letter was sent, asking Defendant to contact counsel.

Request for Judicial Notice

Plaintiff requests that the Court take judicial notice of its Order in this case dated October 18, 2024.

Cal. Rules of Court, rule 3.1113(l), covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

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

Judgment on the Pleadings Standard

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

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

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

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

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

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

Argument

On October 18, 2024, the Court granted Plaintiff's motion to deem admitted requests for admission propounded upon Defendant. The following facts are deemed admitted by Defendant and, therefore, cannot reasonably be controverted: that Defendant has a credit account ending in 5700; that Defendant received periodic statements for that account; that the balance owed on that account was $1,143.41; that no payments have been made on that account since May 7, 2024; and that the last payment on the account was made within the 3 years prior to May 7, 2024.

Plaintiff argues that the Plaintiff has a right to judgment on the pleadings because the Complaint sets out all necessary allegations for common count causes of action and Defendant admits all allegations and admits owing the debt. Since Defendant admits the allegations and she owes the debt, she has no valid affirmative defenses and judgment on the pleadings must be granted. Motion is granted.

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

The Motion is unopposed.

TENTATIVE RULING #14:

MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND.

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15.	**23CV0395**	**VELLA v. PELA**
Compliance		

Attorney Lander to file a Declaration re Status by January 13, 2025, and Response to be filed by January 22, 2025. Nothing has been filed.

TENTATIVE RULING #15:

APPEARANCES REQUIRED ON FRIDAY, JANUARY 24, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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

16.	24CV0903	VW CREDIT v. PETROSIAN
Motion for Summary Judgment		

On November 4, 2024, Plaintiff filed and served its Notice of Motion and Motion for Summary Judgment along with all supporting documents.

On January 16, 2025, Defendant filed his Opposition. The court finds this to be late filed pursuant to Civil Procedure section 437c(b)(2) which states all opposition papers shall be served and filed no less than 20 days before the hearing date. Section 12c states, "[w]here any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, *excluding the day of the hearing* as provided by Section 12." Cal. Civ. Pro. § 12c. Section 1005(b) in conjunction with Section 437c(b)(2) would have made January 3rd the last day for filing Defendant's opposition therefore this document has not been read or considered.

This matter stems from Defendant's purchase of a 2022 Audi A8 with VIN WA1FVBF1XND006146 (the "Vehicle"). The Vehicle was purchased on April 29, 2022 at which time Defendant executed a Retail Installment Sale Contract in agreement with Audi Rocklin for the finance and purchase of the Vehicle (hereinafter the "Purchase Agreement"). Audi Rocklin thereafter assigned its interest in the Purchase Agreement to Plaintiff.

Pursuant to the terms of the Purchase Agreement, Defendant promised to pay Audi Rocklin, or its successor, the principal sum of $116,333.62 with interest at a rate of 5.25% by remitting monthly payments. On or about August 20, 2023, Defendant failed to make the required monthly payment. He has not made any additional payments since that time.

In the event of Defendant's default, the Purchase Agreement allows for Plaintiff to repossess the Vehicle (section 3(d)), sell the Vehicle and apply the income as specified in the agreement (section 3(f)), charge late fees (section 3(a)), advance all amounts owed (section 3(b)), and recoup the cost of collecting the aforementioned (section 3(c)).

Plaintiff now brings this action seeking to recover possession of the Vehicle and a money judgment in the amount of $106,359.84. This amount accounts for the following:

Unpaid Principal Balance	$100,796.86
Interest at 5.25% from 10/12/2023 through 3/6/2024	$2,114.16
Late Charges	$1,345.13
Nonsufficient Funds Fee	$15.00
Attorney's Fees	$1,400
Collection Costs	$688
Total	$106,359.84

The complaint alleges four causes of action: (1) Breach of Contract; (2) Claim and Delivery; (3) Conversion; and (4) Money Lent. Plaintiff argues that there is no genuine dispute as to any material fact and therefore it is entitled to judgment as a matter of law. Defendant, in his Answer, does not dispute that he entered into the Purchase Agreement. He further admits that he is still in possession of the Vehicle, and he is unable to make payments thereon.

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).

After reviewing the filings of the parties and the pleadings in this matter, the court does find that Plaintiff is entitled to judgment as a matter of law. It is undisputed that Defendant entered into the Purchase Agreement and assented to the terms therein. It is undisputed that Defendant stopped making the requisite monthly payments. And it is undisputed that Defendant remains in possession of the vehicle.

Based on the facts before the court, there is no dispute as to any material fact which would allow a trier of fact to find in favor of Defendant under any of the asserted causes of action - Breach of Contract, Claim and Delivery, Conversion, or Money Lent. As such, Plaintiff is entitled to judgment as a matter of law and the Motion for Summary Judgment is granted.

TENTATIVE RULING #16:

1. **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.**
2. **THE COURT WILL SIGN THE [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.**

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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