February 21, 2025
Dept. 9
Tentative Rulings

1.	**24CV1003**	**BANK OF AMERICA v. UNGLES**
Deem Matters Admitted		

Plaintiff Bank of America served Requests for Admissions on Defendant Daniel Boone Ungles on July 3, 2024. *Motion, Exhibit 1*. Plaintiff states that no responses have been received from Defendant.

Plaintiff also mailed Defendant a letter on August 23, 2024, notifying Defendant that his answers were due August 7, 2024, but giving him until September 2, 2024, to respond. *Motion, Exhibit 2.* Within 30 days after service of requests for admissions, the responses are due. California Code of Civil Procedure ("CCP") §2033.250.

CCP §2033.280 provides that if a party to whom requests for admissions have been directed fails to serve a timely response, that party thereby waives any objection to the requests, including one based on privilege or on the protection for work product under § 2018.010 et seq. It further provides that the requesting party may move for an order that the truth of any facts specified in the requests be deemed admitted. The court "shall" make this order unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admissions that is in substantial compliance with paragraph (1) of subdivision (f).

CCP §2033.280 further requires that the Court impose monetary sanctions on the party whose failure to serve a timely response to requests for admission necessitated this motion.

TENTATIVE RULING #1:

1. **ABSENT OBJECTION, MOTION IS GRANTED.**
2. **SANCTIONS IN THE AMOUNT OF $150.00 ORDERED AGAINST 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).

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.	**23CV0586**	**TATE v. PRO ENERGY SERVICES GROUP**
Final Approval of Settlement		

This Motion for Final Approval of the Settlement of this class action lawsuit is unopposed. The Motion does not comply with Local Rule 7.10.05.

At a hearing on October 11, 2024, the court issued an Order Granting Preliminary Approval of a Class Action Settlement. That Order includes the following:

1. The Class Action and PAGA Settlement Agreement and Class Notice attached as Exhibit 1 to the Declaration of Brandon Brouillette in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, filed on or about August 23, 2024 (the "Settlement Agreement"), is within the range of possible recovery and, subject to further consideration at the Final Approval Hearing described below, is preliminarily approved as fair, reasonable, and adequate. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement.
2. For purposes of settlement only, the Court provisionally and conditionally certifies the following class: all persons employed by Defendant Pro Energy Services Group, LLC ("Pro Energy") in California and classified as a non-exempt hourly employee who worked for Pro Energy during the Class Period of April 20, 2019, to June 5, 2024.
3. The Court finds the Settlement Class, consisting of approximately 1,474 members, is so numerous that joinder of all members is impracticable, and that the Settlement Class is ascertainable by reference to the business records of Pro Energy.
4. The Court finds further there are questions of law and fact common to the entire Settlement Class, which common questions predominate over any individualized questions of law or fact, and these common questions include (1) whether Pro Energy paid Settlement Class Members for all hours worked, including overtime hours, at the correct hourly wage; (2) whether Pro Energy provided Settlement Class Members with all required meal periods on a compliant basis; (3) whether Pro Energy provided Settlement Class Members with all required rest periods on a compliant basis; (4) whether Pro Energy provided with required expense reimbursement; (5) Settlement Class Members with compliant wage statements; and (6) whether Pro Energy paid all wages due on separation of employment.
5. The Court finds further the claims of named Plaintiffs Charmaine Tate and Dave Crockett are typical of the claims of the Settlement Class, and that they will fairly and adequately protect the interests of the Settlement Class. Accordingly, the Court appoints Charmaine Tate and Dave Crockett as the Class Representatives, and appoints their counsel of record, Zachary M. Crosner, Jamie Serb, Brandon Brouillette, and Crosner Legal, PC, and Larry Lee and Simon Yang, and Diversity Law Group, as Class Counsel.

6. The Court finds further that certification of the Settlement Class is superior to other available means for the fair and efficient adjudication of the controversy.
7. The Court finds further that, in the present case, the proposed method of providing notice of the Settlement to the Settlement Class via First Class U.S. Mail to each Settlement Class Member's last known address, is reasonably calculated to notify the Settlement Class Members of the proposed Settlement and provides the best notice possible under the circumstances. The Court also finds the Notice of Class Action Settlement form is sufficient to inform the Settlement Class Members of the terms of the Settlement and their rights thereunder, including the right to object to the Settlement or any part thereof and the procedure for doing so, their right to exclude themselves from the Settlement and the procedure for doing so, their right to obtain a portion of the Settlement proceeds, and the date, time and location of the Final Approval Hearing. The proposed Notice of Class Action Settlement and the procedure for providing Notice set forth in the Settlement Agreement, all are approved by the Court.
8. Under the terms of the Settlement Agreement, the Court approves the Parties' selection of Phoenix Settlement Administrators as the Settlement Administrator. The Settlement Administrator is ordered to mail the Class Notice to the Settlement Class Members via First-Class U.S. Mail as specified in the Settlement Agreement, and to otherwise carry out all other duties set forth in the Settlement Agreement. The Parties are ordered to carry out and comply with all terms of this Order and the Settlement Agreement, and particularly with respect to providing the Settlement Administrator all information necessary to perform its duties under the Settlement Agreement.
9. Any member of the Settlement Class who wishes to comment on or object to the Settlement or any term thereof, including any proposed award of attorney's fees and costs to Class Counsel or any proposed representative enhancement to the Class Representatives, shall have forty-five (45) days from the mailing of the Class Notice to submit his or her comments and/or objection to the Settlement Administrator, as set forth in the Settlement Agreement and Class Notice.
10. Any member of the Settlement Class who wishes to exclude themselves from the Settlement shall have forty-five (45) days from the mailing of the Class Notice to submit his or her Request for Exclusion to the Settlement Administrator, as set forth in the Settlement Agreement and Class Notice.
11. The Settlement Administrator is ordered to file a declaration in advance of the Final Approval Hearing attaching and authenticating all Requests for Exclusion, if any, and further attaching and authenticating all Objections, if any.
12. A Final Approval Hearing is hereby set a date to be decided at 8:30 a.m. in Department 9 of the El Dorado County Superior Court, to consider any objections to the Settlement, determine if the proposed Settlement should be found fair, adequate

and reasonable and given full and final approval by the Court, and to determine the amount of attorney's fees and costs awarded to Class Counsel, the amount of any representative enhancement award to the Class Representative, and to approve the fees and costs payable to the Settlement Administrator. All legal memoranda, affidavits, declarations, or other evidence in support of the request for final approval, the award of attorney's fees and costs to Class Counsel, the enhancement awards to the Class Representatives, and the fees and costs of the Settlement Administrator, shall be filed no later than sixteen (16) court days prior to the Final Approval Hearing. The Court reserves the right to continue the Final Approval Hearing without further notice to the Settlement Class Members.

13. Provided he or she has not submitted a timely and valid Request for Exclusion, any Settlement Class Member may appear, personally or through his or her own counsel, and be heard at the Final Approval Hearing regardless of whether he or she has submitted a written objection.

On January 28, 2025, Plaintiffs filed an unopposed motion for final approval of the class action settlement. A copy of the proposed settlement agreement is attached to the Declaration of Brandon Brouillette, dated August 23, 2024, as Exhibit 1.

The Declaration of Mayra Gonzalez, dated January 24, 2025, on behalf of Phoenix Settlement Administrators, ("Gonzalez Declaration") which served as the court-appointed Class Action Settlement Administrator for the case, states that 1,754 individuals were included as Class Members in the action. The Notice of Class and Representative Action was successfully mailed to all class members. Gonzalez Declaration, ¶5. No requests for exclusion, notices of objection or workweek disputes were received from the class members. Gonzalez Declaration, ¶7.

After deductions from the gross settlement amount of $900,000.00 (attorney's fees in the amount of $300,000.00; costs in the amount of $15,000.00; enhanced payment to the named two Class Representatives ($10,000.00 each for a total of $20,000.00) in addition to the PAGA amount ($60,000.00) and the requested settlement administration costs ($17,500.00)), a net settlement amount of $487,500.00 remains to pay settlement class members. Gonzalez Declaration, ¶11.

Of the PAGA payments, $45,000.00 (75%) is to be paid to the Labor Workface Development Agency, and $15,000.00 (25%) is to be paid to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA period. Gonzalez Declaration, ¶13.

The highest individual settlement share to be is $1,491.24; the lowest individual settlement share to be paid is $5.59, while the average individual settlement share to be paid to class members is approximately $277.94. Salinas Declaration, ¶12.

Named Plaintiff Charmaine Tate submitted a Declaration, dated August 22, 2024, ("Tate Declaration") stating that she has been actively involved in the case, and has spent approximately 20 hours communicating with the attorneys, searching for documents and materials, responding to requests for information and reviewing filings. Tate Declaration ¶7. She declares that she accepted potential risks including responsibility for opposing parties' costs and difficulty obtaining future employment. Tate Declaration, ¶8. She further declares that she does not believe that she has any conflict with the other class members. Tate Declaration, ¶7.

The other Class Representative, David Crockett, submitted a Declaration, dated August 6, 2024 ("Crockett Declaration"). His Declaration does not state how many hours he was involved in tasks related to the case, nor whether he believes he has a conflict with any other class members.

Court approval of a class action settlement is governed by California Rules of Court, Rule 3.3769, as follows:

(a) Court approval after hearing

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) Attorney's fees

Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) Preliminary approval of settlement

Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) Order certifying provisional settlement class

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(d) Order for final approval hearing

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) Notice to class of final approval hearing

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

(e) Conduct of final approval hearing

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) Judgment

If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.

It appears that the requirements for court approval pursuant to California Rules of Court, Rule 3.3769 have been satisfied by the documents on file with the court. However, Rule 3.3769(e) requires the court to conduct an inquiry into the fairness of the proposed settlement and allow for any class members to express any objection during the final approval hearing. Accordingly, the parties are required to appear.

TENTATIVE RULING #2:

APPEARANCES REQUIRED ON FRIDAY, FEBRUARY 21, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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

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

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

CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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

3.	**24CV1029**	**CITIBANK v. SILVA**
Deem Matters Admitted		

Plaintiff Citibank served Requests for Admissions on Defendant Arthur Silva on September 4, 2024. *Motion, Exhibit 1.* Plaintiff states that no responses have been received from Defendant.

Plaintiff also mailed Defendant a letter on November 12, 2024, notifying Defendant that his answers were due October 9, 2024, but giving him until November 22, 2024, to respond. *Motion, Exhibit 2.* Within 30 days after service of requests for admissions, the responses are due. California Code of Civil Procedure ("CCP") §2033.250.

CCP §2033.280 provides that if a party to whom requests for admissions have been directed fails to serve a timely response, that party thereby waives any objection to the requests, including one based on privilege or on the protection for work product under § 2018.010 et seq. It further provides that the requesting party may move for an order that the truth of any facts specified in the requests be deemed admitted. The court "shall" make this order unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admissions that is in substantial compliance with paragraph (1) of subdivision (f).

CCP §2033.280 further requires that the Court impose monetary sanctions on the party whose failure to serve a timely response to requests for admission necessitated this motion.

TENTATIVE RULING #3:

1. **ABSENT OBJECTION, MOTION IS GRANTED.**
2. **SANCTIONS IN THE AMOUNT OF $150.00 ORDERED AGAINST 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).

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

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

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

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

4.	**22CV1608**	**CRAMER v. NORTON**
Motions to Compel		

Case is also set as No. 10.

1. Motions to Compel

Defendant Miche Rene Norton ("Norton" or "Defendant") brings a Motion to Compel Responses to Requests for Production of Documents Without Objections ("Motion"). On August 2, 2024, Defendant served upon David Cramer ("Cramer" or "Plaintiff") a second set of discovery including Requests for Production of Documents, Set Two ("RFP"). The RFP were served electronically and by mail. *Declaration of Charles I. Karlin ("CIK Dec.") ¶ 2; Exhibit A*. Defendant alleges that the RFP seek relevant information relating to Cramer's First Amended Complaint. Cramer's responses to the RFP were due on September 6, 2024. *CIK Dec ¶ 3*. Cramer never requested an extension. *Id.* Having not received responses by the due date, on October 11, 2024, counsel for Norton emailed Cramer and requested responses by October 18, 2024, and advised Cramer that should he fail to provide complete responses, without objection, Norton would reserve her right to seek court intervention to compel responses and seek monetary sanctions*. Id; Exhibit B*. As of the filing of this motion, Cramer as not provided any responses. *Id*.

For a complete failure to respond, the moving party need not attempt to resolve the matter outside court before filing the motion. See California Code of Civil Procedure ("CCP") § 2031.300. However, counsel did attempt to meet and confer with Cramer and states Cramer did not respond. See *CIK Dec ¶¶ 2-6; Exhibit B*.

Where there has been no timely response to a demand pursuant to CCP § 2031.010, the demanding party may seek an order compelling a response and for monetary sanctions. CCP § 2031.010; See *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404. All that need be shown in the moving papers is that a discovery request was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. See *Leach v. Sup.Ct.*, (1980) 111 Cal. App. 3d 902, 905–906. No separate statement is required. See California Rules of Court, Rule 3.1345(b).

"Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2031.310(h). These sanctions may be awarded under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or an opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. Cal. Rules of Court 3.1030(a). Defense counsel states that Norton has incurred

$1,460.00 in costs and attorneys' fees in connection with this motion and enforcing this discovery. *CIK Dec ¶ 7.* Sanctions in the amount of $1,460.00 are requested. Counsel bills at $350.00 per hour as an attorney in Orange County. The standard billing rate in El Dorado County may be less but there is no Opposition. Counsel states he has spent 2 hours on the Motion and estimates an hour to draft a reply and an hour to prepare for and attend the hearing. The filing fee for the Motion was $60.00. The Motion is approximately 50% standard language and 50% tailored to this case. No Reply was required. The Court calculates reasonable sanctions to be 1 hour at $350 per hour plus the $60.00 filing fee, for a total of $410.00.

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Defendant Miche Rene Norton ("Norton" or "Defendant") brings a Motion to Compel Responses to Special Interrogatories Without Objections ("Motion"). On August 2, 2024, Defendant served upon David Cramer ("Cramer" or "Plaintiff") a second set of discovery including Special Interrogatories ("SI"). The SI were served electronically and by mail. *Declaration of Charles I. Karlin ("CIK Dec.") ¶ 2; Exhibit A*. Defendant alleges that the SI seek relevant information relating to Cramer's First Amended Complaint. Cramer's responses to the SI were due on September 6, 2024. *CIK Dec ¶ 3.* Cramer never requested an extension. *Id.* Having not received responses by the due date, on October 11, 2024, counsel for Norton emailed Cramer and requested responses by October 18, 2024 and advised Cramer that should he fail to provide complete responses, without objection, Norton would reserve her right to seek court intervention to compel responses and seek monetary sanctions. *Id*; *Exhibit B*. As of the filing of this motion, Cramer as not provided any responses. *Id*.

For a complete failure to respond, the moving party need not attempt to resolve the matter outside court before filing the motion. See California Code of Civil Procedure ("CCP") § 2031.300. However, counsel did attempt to meet and confer with Cramer and states Cramer did not respond. See *CIK Dec ¶¶ 2-6; Exhibit B*.

Where there has been no timely response to interrogatories, the demanding party may seek an order compelling a response and for monetary sanctions. CCP § 2030.290. All that need be shown in the moving papers is that a discovery request was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. See *Leach v. Sup.Ct.*, (1980) 111 Cal. App. 3d 902, 905–906. No separate statement is required. See California Rules of Court, Rule 3.1345(b).

"Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2031.310(h). These sanctions may be awarded under the Discovery Act in favor of a party who files a motion to compel

discovery, even though no opposition to the motion was filed, or an opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. Cal. Rules of Court 3.1030(a). Defense counsel states that Norton has incurred $760.00 in costs and attorneys' fees in connection with this motion and enforcing this discovery. *CIK Dec ¶ 7*. Sanctions in the amount of $760.00 are requested. Counsel bills at $350.00 per hour as an attorney in Orange County. The standard billing rate in El Dorado County may be less but there is no Opposition. Counsel states he has spent 2 hours on the Motion and estimates an hour to draft a reply and an hour to prepare for and attend the hearing. The filing fee for the Motion was $60.00. The Motion is approximately 50% standard language and 50% tailored to this case; however, it is nearly identical to the other Motion filed concurrently. No Reply was required. The Court calculates reasonable sanctions to be 30 minutes at $350 per hour plus the $60.00 filing fee, for a total of $235.00.

2. <u>Sanctions under CCP section 128.5</u>

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.

As of the January 24, 2025 hearing, Plaintiff had not filed a response to the court's motion. The court continued the matter to give Plaintiff an additional opportunity to file a response. Plaintiff still has not filed a response.

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 limiting the sanctions to only a 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 April 21, 2025.

3. <u>Demurrers</u>

Miche Rene Norton ("Norton") demurs to David Cramer's ("Cramer") First Amended Complaint ("FAC") on the basis that: (1) the FAC fails to state facts sufficient to constitute a

cause of action against Norton. Code Civ. Proc. § 430.10(e) and (2) the FAC is ambiguous and unintelligible as to Norton. Code Civ. Proc. § 430.10(f).

First American Title Company ("First American") demurs to Cramer's FAC on the grounds that: (1) the FAC fails to state facts sufficient to constitute a cause of action against First American. Code Civ. Proc. § 430.10(e) and (2) the FAC is uncertain. Code Civ. Proc. § 430.10(f).

Standard of Review - Demurrer

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.**

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

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Pursuant to the Declarations of Charles I. Karlin and Michael J. Kuzmich, the Court finds that sufficient meet and confer efforts were attempted.

Requests for Judicial Notice

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

There are no requests for judicial notice.

Norton Demurrer

Norton argues that the only cause of action addressed to Norton in the FAC is labeled "Encroachment Trespass" and that the cause of action fails to allege facts sufficient to establish the elements of a claim for encroachment or trespass against Norton. Norton further argues that leave to amend should be denied unless Cramer carries his burden of showing a reasonable possibility he can cure by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d. 311, 318.

The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. *Ralphs Grocery Co. v. Victory Consultants* (2017) 17 Cal.App.5th 245, 262. The Court agrees that Cramer's FAC does not allege sufficient facts to establish a claim for trespass.

To establish the existence of an encroachment, one must prove that the encroaching structure extends beyond its legal boundaries without a legal right and without the consent of the person occupying the adjoining land. *Kafka v. Bozio* (1923) 191 Cal. 746, 750. The Court agrees that Cramer's FAC does not allege sufficient facts to establish encroachment.

Norton argues in the Reply that Cramer fails to address the arguments raised in the Demurrer. The Court agrees.

First American Demurrer

First American argues that the first cause of action does not allege that First American made any unauthorized entry onto Cramer's real property. FAC, 3:10-4:4; *Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177-1178. Cramer's opposition does not address or refute this argument. In fact, First American argues that Cramer admits that the alleged encroachment onto his property occurred in the 1980s by a former property owner. Cramer MPA, 2:15-21 (admitting that the "illegal work" was performed by a prior owner of the Norton Property in the 1980s). The Court agrees.

First American generally demurred to the second cause of action for "Breach of Contractual Duty/Duty to Pay a Covered Claim" arguing that it also fails to state facts sufficient to constitute any cause of action against First American. Code Civ. Proc. § 430.10(e); *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998)19 Cal.4th 26, 38-39. Specifically, First American argues that the second cause of action does not allege facts to support the elements of breach of contract, i.e., plaintiff did everything required of it under the contract, the defendant did not do something required by the contract, and plaintiff was harmed as a result. *CSAA Ins. Exchange v. Hodroj* (2021) 72 Cal.App.5th 272, 276 (citing *Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391). The Court agrees.

Lastly, First American specially demurred to the FAC arguing that it is uncertain. Code Civ. Proc. § 430.10(f). First American argues that Cramer's opposition confirms that the FAC and his allegations are ambiguous and unintelligible. The Court agrees.

First American argues that leave to amend should be denied, because Cramer failed to meet his burden. A demurrer may be sustained without leave to amend absent a showing by the plaintiff that a reasonable possibility exists that the defect can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311,318. The plaintiff must carry their burden of demonstrating that

sufficient amendment is possible. *Id.* (the burden "is squarely on Plaintiff' to establish a reasonable possibility that defects can be cured on amendment).

While the Court acknowledges that Cramer has not responded to the arguments raised in either Demurrer, nor has he demonstrated in his Opposition a reasonable possibility that he can cure the significant defects in the FAC, the Court is bound by the liberality in permitting amendments. *Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal. App. 3d 1111, 1117, 1119, (The courts are liberal in permitting amendments, not only when a complaint is defective in form, but also when substantial defects are apparent. "Great liberality should be exercised in permitting a plaintiff to amend.")

The Court further notes that Cramer seems to admit that the FAC is flawed, evidenced by the fact that he filed a Motion for Leave to Amend the Complaint on February 3, 2025. That Motion does not comply with the requirements of California Rules of Court 3.1324. The Court hereby drops Cramer's Motion for Leave to Amend from calendar and vacates the March 14, 2025 hearing.

4. Case Management Conference

At the January 24, 2025 hearing, the court reset the next Case Management Conference on February 21, 2025, as the parties would already be in court. However, given the court's sustaining of both Defendants' Demurrers, the court finds that the case is not yet at issue as Plaintiff will need to file an amended complaint to proceed with the matter, after which Defendants will have the opportunity to file a responsive pleading. As such, the court continues the Case Management Conference to May 13, 2025 at 10 a.m. in Department 10.

TENTATIVE RULING #4:

1. **MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO, IS GRANTED.**
2. **SANCTIONS IN THE AMOUNT OF $410.00 ARE AWARDED TO DEFENDANT, PAYABLE BY PLAINTIFF DAVID CRAMER BEFORE APRIL 21, 2025.**
3. **MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES, SET TWO, IS GRANTED.**
4. **SANCTIONS IN THE AMOUNT OF $235.00 ARE AWARDED TO DEFENDANT, PAYABLE BY PLAINTIFF DAVID CRAMER BEFORE APRIL 21, 2025.**
5. **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 APRIL 21, 2025.**
6. **NORTON'S DEMURRER SUSTAINED WITH LEAVE TO AMEND WITHIN 10 DAYS.**
7. **FIRST AMERICAN'S DEMURRER SUSTAINED WITH LEAVE TO AMEND WITHIN 10 DAYS.**
8. **CRAMER'S MOTION FOR LEAVE TO AMEND IS DROPPED FROM CALENDAR, AND THE MARCH 14, 2025 HEARING IS VACATED.**

9. **THE COURT CONTINUES THE CASE MANAGEMENT CONFERENCE TO MAY 13, 2025 AT 10 A.M. IN DEPARTMENT 10.**

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.

5.	**24CV0898**	**KONZ v. ROONEY**
Demurrer		

This case involves the sale of a home, conducted pursuant to a standard Residential Purchase Agreement ("RPA") which gives the buyer the right to conduct a survey prior to closing. Plaintiff Eric Konz ("Plaintiff") did not conduct a survey prior to closing but subsequently did so approximately 10 months later and discovered that the home's pool was partially on adjoining property. (First Amended Complaint "FAC" ¶13). Three years after that, Plaintiff entered into a tolling agreement with the seller, Clear Horizon Capital, Inc. ("Clear") and Clear's principal Christian Rooney ("Rooney" or "Defendant").

Standard of Review - Demurrer

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

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Defense counsel states that he met and conferred with Plaintiff's counsel by email and phone prior to filing the Demurrer. (Larsen Decl. ¶4). However, those efforts were mostly made prior to Plaintiff's filing of the First Amended Complaint ("FAC"). Subsequent to the filing of the FAC, Defense counsel sent one e-mail. Considering the parties engaged in meaningful discussions which resulted in Plaintiff filing the FAC, the Court finds that further conferences between counsel would likely be productive. Hearing continued to Friday, March 21, 2025, at 8:30 AM in Department Nine. The parties are hereby ordered to engage in further discussions.

TENTATIVE RULING #5:

1. **HEARING CONTINUED TO FRIDAY, MARCH 21, 2025, AT 8:30 AM IN DEPARTMET NINE.**
2. **PARTIES ARE ORDERED TO MEET AND CONFER IN AN EFFORT TO REDUCE THE ISSUES OR ELIMINATE THE NEED FOR A DEMURRER.**
3. **BEFORE MARCH 12, 2025, DEFENDANT TO FILE A DECLARATION WITH THE COURT OUTLINING THE MEET AND CONFER EFFORTS AND THE NEED FOR THE COURT TO RULE ON THE DEMURRER.**

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.	23CV1771	MADRONA VINEYARDS v. VISMAN
Substitution of Personal Representative		

Plaintiffs Madrona Vineyards L.P. and Leslie Bush as Trustee of the Bush Living Trust ("Plaintiffs") submit this Motion for Substitution of Personal Representative for Deceased Defendant. Specifically, Plaintiffs seek an order, pursuant to Code of Civil Procedure ("CCP") §377.41[1], substituting "Defendant Michelle T. Visman, Personal Representative of the Estate of Jerry W. Visman, Deceased" in the place of the decedent, "Defendant Jerry Visman, an individual" as a defendant in this action.

Where a cause of action against a decedent survives, it may be asserted against the personal representative of the estate, so long as the claims procedure requirements of Probate Code section 9000 et seq. are met. Code Civ. Proc. § 377.40. If these requirements are met, "[o]n motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative" Code Civ. Proc. § 377.41.

The claims procedure enumerated in the Probate Code requires any creditor who may have a claim against estate property to file a creditor's claim pursuant to Probate Code §§ 9000-9399. Indeed, a claim must be filed even if there is an action pending against the decedent at the time of death. Prob. Code § 9370, subd. (a). In order to continue an action pending at the time of death, the plaintiff must: (1) timely file and serve a creditor's claim; (2) the claim must be rejected and (3) the plaintiff must apply to the court in which the action or proceeding is pending for an order to substitute the personal representative in the action or proceeding. Prob. Code § 9370 subd. (a)(1)-(3); see also *Wood v. Brown* (1974) 39 Cal.App.3d 232, 236. The third requirement, however, applies only when the notice of rejection states that plaintiff has three months within which to apply for an order for substitution. Prob. Code § 9370 subd. (a)(3). A creditor's claim is timely filed if it is filed either four (4) months from the date the letters were first issued or sixty (60) days from the date notice was mailed or delivered to the creditor. Prob. Code § 9100.

Plaintiffs allege that they have complied with the claims procedure enumerated in the Probate Code, and thus, the court should allow this pending action to proceed against Ms. Visman as the Personal Representative of Mr. Visman's estate. Plaintiffs assert that Michelle Visman did not serve them with notice of administration. Despite that, Plaintiffs filed and served creditor's claims on November 6, 2024 within four (4) months of August 26, 2024, the date Letters of Administration were issued appointing Michelle Visman the personal representative.

[1] On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made.

As of the date of this Motion, Plaintiffs state that Michelle Visman as personal representative, has failed to act on the timely served creditor's claims. Accordingly, pursuant to Probate Code §9256, Plaintiffs elect to deem the creditor's claims as rejected and proceed with this Motion.

There is no opposition.

TENTATIVE RULING #6:

ABSENT OBJECTION, THE MOTION IS GRANTED.

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

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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.	**PC20190656**	**AFRICA v. LENNAR HOMES**
Motion to Dismiss		

This matter was heard on January 24, 2025. Plaintiffs subsequently filed an Opposition, to which Defendant replied. In its Reply, Defendant requests that the Court continue the hearing on the Motion to Dismiss until after February 28, 2025. The hearing is hereby continued until April 11, 2025, at 8:30 AM in Department Nine. The Court's prior direction that the parties meet and confer remains in effect.

TENTATIVE RULING #7:

HEARING CONTINUED TO FRIDAY, APRIL 11, 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.	21CV0356	POTOSKY REVOCABLE LIVING TRUST v. BELFORD HOA
Motion for Reconsideration		

On January 10, 2025, the Court issued a ruling, denying Plaintiff's motion to amend. Plaintiff now brings a Motion for Reconsideration for Leave to File Second Amended Complaint.

California Code of Civil Procedure ("CCP") § 1008 states that: when an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of order and based upon new or different facts, circumstances or law, make application to the same judge or court that made the order, to reconsider the mater and modify, amend, or revoke the prior order."

Plaintiff argues that part of the Court's reasoning was based on the case proceeding to mediation on January 14, 2025, and that mediation did not go forward. Plaintiff asserts that the Court's decision may have been different had the Court known that mediation was not going forward. Next, Plaintiff seems to argue that Defendant needs to again prove that they will be prejudiced by the requested amendment. However, that issue was already argued and decided by the Court. Lastly, Plaintiff states it is willing to stipulate to a 90-day continuance.

When reading the Court's January 10, 2025, ruling, there is one mention of the upcoming mediation. Ruling, p. 1. However, the decision is based on Plaintiff's delay in bringing the Motion for Leave and failure to pursue the amendment with due diligence, along with the prejudice to Defendant as it prepares for trial. <u>The mediation was not a justification in denying leave to amend, and the mediation not going forward does not change the Court's prior decision.</u>

Defendant argues in its opposition that the Court has plenary power to issue sanctions for violations of CCP § 1008. Defendant argues that it has proven that the Motion for Reconsideration raises no new facts, circumstances, or law that this Court has not already considered or, alternatively, that Plaintiff could have raised at the time of the Amended Motion but chose not to or neglected. Defendant argues it has unfairly incurred the following fees and costs to oppose what is a meritless Motion for Reconsideration: $2,368 in fees and $60.00 in costs. (Sproul Decl. ¶7). Should this Court agree that CCP § 1008 has been violated, or other grounds under § 128.7 of the Code of Civil Procedure for warranting a sanction, Defendant requests sanctions against Plaintiff and/or its counsel in the total sum of $2,428. The court uses its discretion to reserve over the issue of sanctions to the time of trial. Given that the May 6, 2025 trial is set to be heard by a jury, the court will rule on the issue of sanctions outside of the jury's presence.

TENTATIVE RULING #8:

1. **MOTION DENIED.**

2. **DEFENDANT'S REQUEST FOR SANCTIONS IS RESERVED TO THE TIME OF TRIAL.**

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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9.	**22CV1608**	**CRAMER v. NORTON**
Review Hearing		

See No. 4 above.

10.	24CV0313	ESPINOSA v. SUPERIOR PLUS ENERGY SERVICES
Demurrer		

This case involves a class action lawsuit brought by Plaintiff Devin L. Espinosa ("Plaintiff") against Defendants Superior Plus Energy Services, Superior Plus Energy Services, Inc., Superior Plus Propane, Kamps Propane, Inc, and Does 1 through 50 (collectively "Defendants"). Defendants demur on the grounds of lack of subject matter jurisdiction and because there is another action pending between the parties on the same causes of action pursuant to Code of Civil Procedure § 430.10, and Defendants move to stay further proceedings based on the Court's inherent authority and under the Exclusive Concurrent Jurisdiction Rule.

Plaintiff filed her Complaint on February 16, 2024, alleging 13 different causes of action. On April 22, 2024, Plaintiff filed her First Amended Complaint ("FAC") adding a 14th cause of action alleging penalties under the Private Attorneys General Act ("PAGA"). Kamps Propane, Inc. is currently a Defendant in another similar class and PAGA suit before the San Diego County Superior Court, filed on April 13, 2021 ("*Stevens*"). The named plaintiffs in *Stevens* filed their Third Amended Complaint on December 15, 2024, and brought that action on behalf of themselves, potential class members, and current and former aggrieved employees. Defendants allege that the *Stevens* matter encompasses both time periods that Plaintiff worked for Kamps Propane, Inc., as well as the class period and PAGA period that would be covered by Plaintiff's FAC. Defendants argue that Plaintiff, by virtue of having been employed during the class and PAGA period, is a class member of the currently pending *Stevens* matter and is an aggrieved employee of the PAGA claim. The *Stevens* matter is currently stayed, pending individual arbitration on both named plaintiffs. (Juarez Decl., ¶ 6.)

Standard of Review - Demurrer

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

Meet and Confer Requirement

Code of Civil Procedure ("CCP") §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.

CCP §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Defense counsel indicates sufficient meet and confer efforts in her Declaration. (Juarez Decl.)

Requests for Judicial Notice

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

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)

Defendants request judicial notice of the Third Amended Complaint filed with the Superior Court of California, San Diego County. Pursuant to Evidence Code §452(d), Defendants' request for judicial notice is granted.

***

ARGUMENT

Overlapping Causes of Action

CCP § 430.10 provides that Defendants may demur to a pleading based on a variety of grounds—including, that there is another action pending between the same parties on the same cause of action. The basis for the demurrer may appear on the face of the complaint or must be based on judicially noticed information. CCP § 430.30. For a demurrer based on substantially similar actions, the causes of action and issues must be substantially the same, and the parties in both actions must be identical and stand in "the same relative position as plaintiff and defendant." *Franchise Tax. Bd. v. Firestone Tire & Rubber Co.* (1978) 87 Cal.App.3d 878, 883-84. Notably, where a demurrer is sustained because of another pending action, an abatement of further proceedings pending should be issued pending the resolution of the first action. *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 788.

Defendants argue that the potential class members – non-exempt, California former and current employees of Defendants – are the same for the two matters, except the potential class in the *Stevens* matter encompasses a larger class and larger class period because it was filed in 2021. Similarly, Defendants argue that the *Stevens* defendants are the same because Superior Plus Energy Services, Inc. acquired Kamps Propane, Inc. in or around December 2022.

Next, Defendants argue that the PAGA action in the *Stevens* matter and the current matter are composed of the same parties. Defendants argue that the parties for the PAGA representative action are the LWDA and the Defendants, not the individual, named plaintiffs. Thus, Defendants argue that Plaintiff, as a proxy for the LWDA does not have the ability to separately pursue a PAGA action that is already currently pending.

Lastly, Defendants argue that the *Stevens* matter is based on substantially similar causes of action. When the causes of action in a different action are substantially the same for a plea of abatement, the determination is drawn by considering whether resolution in the first action, here the *Stevens* matter, "would be a complete bar to the second action." *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787-88. The *Stevens* matter and this current action overlap in nine causes of action: failure to pay minimum and overtime wages; meal and rest break violations; failure to reimburse business expenses under Labor Code section 2802; violations of Labor Code section 226; waiting time penalties under Labor Code section 203; violation of Business and Professions Code section 17200; as well as each matter's PAGA cause of action. (See Req. for Judicial Notice, Exhibit A).

The only non-overlapping causes of action are Plaintiff's claims regarding failure to pay vacation wages; failure to timely pay wages earned under Labor Code sec. 204; violation of Labor Code sec. 221; failure to maintain records under Labor Code sections 1174 and 1174.5;

and failure to produce records pursuant to Labor Code sections 226 and 1198.5. Defendants argue that although the *Stevens* matter doesn't explicitly name these causes of action, the issues that give rise to these additional causes of action are the same as those contemplated in the *Stevens* matter.

The Court agrees with Defendants' arguments, Plaintiff has the burden to show that the pleadings could be cured, supporting leave to amend should be granted. Plaintiff filed no opposition.

Stay Proceedings

The Exclusive Concurrent Jurisdiction Rule is clear that courts may stay a later-filed suit in favor of an earlier lawsuit pending in a different court. *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786-87. The Exclusive Concurrent Jurisdiction Rule sets out that "the first [court] to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved." *California Union Ins. Co. v. Trinity River Land Co.* (1980) 105 Cal.App.3d 104, 109. Importantly, the Exclusive Concurrent Jurisdiction Rule is much broader than a traditional plea of abatement as it does not require absolute identity of the parties, causes of action, or remedies sought. *Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 293. A court may use the Exclusive Concurrent Jurisdiction Rule to stay the proceedings in the later-filed suit. *Ibid.* Thus, Defendants argue that the Exclusive Concurrent Jurisdiction Rule simply considers whether the *Stevens* matter and the current action arise from the "same transaction." *Plant Insulation Co.*, 224 Cal.App.3d at 789; *California Union Ins. Co.,* 105 Cal.App.3d at 108.

In the present action, Plaintiff filed her Complaint years after the *Stevens* matter had commenced. Defense counsel made Plaintiff aware of the *Stevens* matter prior to the filing of Plaintiff's FAC. Juarez Decl. The causes of action alleged and the time frame of the *Stevens* matter, encompass Plaintiff's dates of employment and the PAGA period. Defendant argues that while Plaintiff's FAC has multiple Defendants, they are all affiliated entities or fictitious names for the same entities, and that Plaintiff's claims arise from her employment with Kamps Propane, Inc. which is the named defendant in *Stevens*.

It is proper to stay this suit until the *Stevens* matter is resolved. There is no opposition.

TENTATIVE RULING #10:

1. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEFENDANTS' DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**
3. **MOTION TO STAY THE PROCEEDINGS IS GRANTED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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

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

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