1.	23CV1751	WEBSTER v. WEBSTER
Attorney's Fees & Costs		

On December 6, 2024, Plaintiff filed a motion for an award of attorney's fees, costs, and punitive damages. At the hearing on January 24, 2025, Plaintiff withdrew his request for punitive damages. The court continued the matter to give Defendants an opportunity to file a response to the motion.

Upon review of the file, neither Defendant filed a response to the motion. Plaintiff requests \$15,515 in attorney's fees and \$1,485.80 in costs. A declaration in support of the fees request as well as a memorandum of costs was filed concurrently with the motion. Upon review of the pleadings, the court finds the amounts requested to be reasonable. The court finds counsel's billing rate of \$375 per hour and the number of hours expended to be reasonable under the circumstances.

The court orders Defendants to pay Plaintiff \$15,515 in attorney's fees and \$1,485.80 in costs, which shall be included in the judgment in the matter.

TENTATIVE RULING #1:

THE COURT ORDERS DEFENDANTS TO PAY PLAINTIFF \$15,515 IN ATTORNEY'S FEES AND \$1,485.80 IN COSTS, WHICH SHALL BE INCLUDED IN THE JUDGMENT IN THE MATTER.

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.

2.	22CV1022	LEATHERS v. TIPSY PUTT, LLC
Motion to be Relieved		

Counsel for the Defendant Tipsy Putt, LLC has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362. A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that facts exist permitting withdrawal.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendant at its last known address and on counsel for Co-Defendants as well as Plaintiff was filed on January 27, 2025.

No hearing dates are currently scheduled for the case. No proposed Order was filed.

TENTATIVE RULING #2:

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

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

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.

3.	23CV1425	KHAN v. FUEL 4 LESS
Motion to Compel		

The Notice does not comply with Local Rule 7.10.05(C).

Defendants and Cross-Complainants Highway Fifty, Inc. DBA Fuel 4 Less; Sharab Ahmad; and Rickvinder Kang (collectively "Defendants") bring this Motion to Compel business records from non-party Black Rock Wholesale Inc. ("Black Rock"). Defendants state that the records are critical to their defense and cross-claims in this case, that Black Rock has refused to comply with the deposition subpoena and yet Black Rock has not objected nor filed a Motion to Quash.

This is an employment case wherein Plaintiffs Anais Khan and Mohammad Khan (collectively, "Plaintiffs") allege that they were underpaid, forced to work through breaks and wrongfully terminated. Defendants discovered that Plaintiff Mohammad Khan ("Mohammad") was employed in some capacity for Black Rock while he was also working for Defendants. On information and belief, Defendants state they have good cause to believe that Mohammad was working for Black Rock during, at least, some of the hours he also claimed to be working for Defendants. Alternatively, Defendants state they have good cause to believe that Anais Khan ("Anais") would cover some of Mohammad's shifts while he was supposed to be working for Defendant and would instead be working for Black Rock.

"Compliance with subpoenas is not optional." (*Puerto v. Super. Ct.* (2008) 158 Cal.App.4th 1242, 1257.) "[I]f a witness receiving a subpoena wishes to resist it, the witness cannot merely opt out, but must make a motion to quash or modify that subpoena. (*Id*. (citing Code Civ. Proc., § 1987.1).) When nonparty fails or refuses to appear for deposition and produce documents in response to a subpoena, then the subpoenaing party may seek an order from the court compelling compliance. (See Code Civ. Proc., §§ 1987.1, 2025.480.

California's Code of Civil Procedure provides for an "expansive scope of discovery." (*Puerto v. Super. Ct., supra*, 158 Cal.App.4th at 1249 (the discovery statutes are "construed broadly in favor of disclosure, so as to uphold the right to discovery whenever possible") (citing *Emerson Elec. Co. v. Super. Ct.* (1997) 16 Cal.4th 1101, 1108; *Greyhound Corp. v. Super. Ct.* (1961) 56 Cal.2d 355, 376).) For example, the Code permits discovery of any non-privileged documents that relate to any claim or defense of any party to the action, or which are "relevant to the subject matter" of the action. (Code Civ. Proc. § 2017.10.)

Defendants served a notice to consumer on Plaintiff Khan on October 30, 2024, and no objections were received. Thereafter, on November 14, 2024, Defendants personally served the deposition subpoena on Black Rock, with a production date of December 5, 2024. The parties did engage in some meet and confer efforts but were unable to resolve the issue.

The court may order the losing party to pay the prevailing party's expenses, including reasonable attorneys' fees incurred in connection with the motion, if it finds that the motion was "made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive." (Code Civ. Proc., § 1987.2(a); see also Code Civ. Proc., § 2025.480(j).) However, spending an excess of 7 hours of associate time, and 1.5 hours of supervising attorney time on a fairly standard motion to compel that is just over 6 pages is completely excessive. The Court awards sanctions in the amount of \$940.00, consisting of 2 hours of associate time at \$350/hour and ½ hour of attorney time at \$480/hour.

TENTATIVE RULING #3:

- 1. MOTION TO COMPEL IS GRANTED.
- 2. BLACK ROCK MUST PRODUCE BEFORE FRIDAY, MARCH 28, 2025.
- 3. SANCTIONS IN THE AMOUNT OF \$940.00 AWARDED AGAINST BLOCK ROCK, PAYABLE BEFORE FRIDAY, MARCH 28, 2025.

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

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

4.	24CV1538	KORNAHRENS v. MILLAR
Motion to be Relieved		

Counsel for the Plaintiffs has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been irreconcilable breakdown in the attorney-client relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. <u>Proof of service of the motion on the Plaintiffs</u> at their last known address and on counsel for Defendant was not filed.

A Case Management Conference is currently scheduled on April 1, 2025, and the date is listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #4:

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

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

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5.	23CV1556	RIAZ v. HUGHES
Motion to Set Aside		

This Motion was heard on December 13, 2024. The matter was continued to February 7, 2025, to allow Defendants time to submit a proposed Answer and file a Declaration setting forth the basis for their motion. At the hearing on February 7, 2025, the Court intended to deny the Motion, but Defendant Ragan appeared, and the hearing was again continued to allow the filing of said documents. It appears a proposed Answer was lodged with the Court on March 6, 2025, but there is still no Declaration.

TENTATIVE RULING #5:

MOTION DENIED.

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

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6.	24CV0612	ANDREWS v. CROW
Minor's Compromise		

On April 9, 2024, Leo Jeffrey Johnson, grandfather of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on April 9, 2024.

* * *

This is a Petition to compromise a minor's claim. The Petition states the minor sustained injuries to his head (headaches) and neck resulting from an auto accident in 2024. <u>A copy of the accident investigation report was **not** filed with the Petition, as required by Local Rule <u>7.10.12A(4)</u>. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$29,500.00.</u>

The Petition states the minor incurred \$6,510.85, negotiated to be reduced to \$4,232.05 in medical expenses that would be deducted from the settlement. <u>An e-mail confirming the lien</u> <u>amount is attached to the Petition as required by Local Rules of the El Dorado County Superior</u> <u>Court, Rule 7.10.12A.(6).</u>

The Petition states that the minor has fully recovered and there are no permanent injuries. <u>A doctor's report from the day of the accident concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).</u>

The minor's attorney requests attorney's fees in the amount of \$7,288.50 which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) <u>The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).</u>

The minor's attorney also requests reimbursement for costs in the amount of \$86.50, for the Court filing fee. There are no copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the \$17,816.44 due to the minor, the Petition requests that they be deposited into an insured account with U.S. Bank subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

<u>The minor's presence at the hearing will be required in order for the court to approve the</u> <u>Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.</u>

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED ON FRIDAY, MARCH 14, 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).

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7.	24CV1624	EDEN v. RIVER CITY PETROLEUM, INC.	
Approval of Settlement			

The Notice does not comply with Local Rule 7.10.05.

Plaintiff Ramy Kaufler Eden ("Plaintiff") brings this Motion for Settlement Approval. Cross-Defendants Placerville Valero, Sukhvir Singh and Surinder Kaur, (collectively "Placerville Partners") filed a non-opposition. This case alleges that defendant River City Petroleum, Inc. ("River City") violated Prop. 65 by exposing individuals to the chemical Unleaded Gasoline (Wholly Vaporized) (herein, "Gasoline") at the service station located at 1296 Broadway in Placerville, California ("Subject Station") without first providing such consumers with a "clear and reasonable" warning of such exposure.

Following arm's length negotiations between all parties, this proposed settlement was reached. Plaintiff states that this settlement was entered into by all parties, reported to the California Attorney General, meets all requirements under California law and will resolve this matter in its entirety. Plaintiff further states that this settlement will fulfill the aims of Prop. 65 by requiring River City and Placerville Partners to provide clear and reasonable exposure warnings at the Subject Station, and it provides that Placerville Partners pay a reasonable civil penalty as a deterrent to future violations and provides for Placerville Partners' payment of Plaintiff's reasonable attorneys' fees and costs.

In enacting Prop. 65, the people of California declared their right to protect themselves against carcinogenic chemicals and to be informed about exposures to such chemicals. Prop. 65 Ballot Pamphlet, 1986, p. 53. This law protects the public by requiring businesses with ten or more employees to provide "clear and reasonable" warnings before knowingly and intentionally exposing any person to a known carcinogen. See Health & Saf. Code § 25249.6. A person may commence a private action in the public interest to enforce Prop. 65's requirements. See Health & Saf. Code § 25249.7(d)(1). A successful private enforcer is entitled to retain 25% of all civil penalties awarded and to receive reimbursement of their reasonable attorneys' fees. See Health & Saf. Code §§ 25249.7(b), 25249.12(c)(1); Code Civ. Proc., § 1021.5; See also Cal. Code Regs. tit. 11, § 3201. The remaining 75% of penalties are paid to the State of California to be kept in the Safe Drinking Water and Toxic Enforcement Fund, administered by OEHHA. See Health & Saf. Code § 25249.12(c); Cal. Code Regs. tit. 27, Preamble. After a Prop. 65 matter is filed in court, its settlement requires court approval upon noticed motion. See Health & Saf. Code § 25249.7(f)(4). The court may approve the settlement only if the warning required by the settlement complies with Prop. 65; the award of attorney's fees is reasonable; and the penalty amount is reasonable. Id.

//

Based on the Memorandum of Points and Authorities, the two Declarations of attorney Jarrett S. Charo, and the lack of Opposition, the Court approves entry of the settlement.

TENTATIVE RULING #7:

MOTION GRANTED.

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

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	8.	24CV2658	SB CONSTRUCTION, INC. v. DORMANDY
Motion to Set Aside		t Aside	

Defendant Shelane Dormandy brings this motion to set aside entry of default, pursuant to Code of Civil Procedure §473(b). The Complaint was filed on November 26, 2024, and served on Defendant on December 3, 2024. The motion states that Defendant was unaware and did not understand that she was required to file a responsive pleading within 30 days, and she was not represented by counsel. The Court entered default against Defendant on January 3, 2025, and Defendant obtained counsel on January 15, 2025. This motion was filed on January 27, 2025.

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. Civil Procedure Code § 473(b). In order to qualify for relief under section 473, the moving party must act diligently in seeking relief and must submit affidavits or testimony demonstrating a reasonable cause for the default. *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234. "It is settled that the law favors a trial on the merits. . . and therefore liberally construes section 473." *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1477. "Doubts in applying section 473 are resolved in favor of the party seeking relief from default. . . and if that party has moved promptly for default relief, only slight evidence will justify an order granting such relief. *Id.*, 1477- 1478. "The burden of establishing excusable neglect is upon the party seeking relief who must prove it by a preponderance of the evidence." *Id.*, 1478.

Defendant acted diligently in seeking relief, and her proposed Answer is attached to the Declaration of attorney Alec J. Stroup as Exhibit A.

TENTATIVE RULING #8:

MOTION TO SET ASIDE DEFAULT 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.

9.	24CV1721	BIRKELAND v. PROEQUITY ASSET MANAGEMENT CORP.
Demurrer		

Plaintiff Brett Birkeland ("Plaintiff") is a minority shareholder in ProEquity Asset Management Corporation ("Defendant" or "ProEquity"). Plaintiff jointed ProEquity in 2017 and in 2022, he resigned as a Director and the Chief Financial Officer ("CFO"). Plaintiff brought this Complaint, alleging that ProEquity has never paid Plaintiff for his shares, despite ProEquity's acceptances of Plaintiff's share tender and an agreement on purchase price. (Compl. ¶12) ProEquity later produced a written Stock Purchase and Separation Agreement, which Plaintiff argues he performed, but the ProEquity has not. (Compl. ¶13)

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").

<u>According to the Declaration of James Brunello, the parties did engage in meet and</u> <u>confer efforts.</u>

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(I), 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)." <u>There is no request for judicial notice.</u>

The Complaint includes 6 causes of action: (1) involuntary dissolution pursuant to Corp. Code §1800(b)(4); (2) involuntary dissolution pursuant to Corp. Code §1800(b)(5); (3) accounting; (4) books and records demand for inspection; (5) in the alternative of dissolution, breach of contract; and (6) in the alternative of dissolution, breach of implied covenant of good faith and fair dealing.

Defendant demurs to the Fifth Cause of Action on the grounds that it fails to state a cause of action upon which relief can be granted.

Defendant argues there are deficiencies in the pleadings, as Plaintiff acknowledges that the Bylaws require a unanimous vote by the Board to authorize any unusual expenditure over \$5,000, that Plaintiff's sales price was \$998,080.40, and that the Board failed to comply. Defendant addresses partial performance and states "there is no allegation that the alleged partial performance resulted in any loss much less an unjust or unconscionable loss to Plaintiff." (Demurrer, p. 6, l. 24-25). Defendant further argues that the pleadings don't support equitable estoppel.

In context of real property contracts, one party's part performance of, and resulting detrimental change of position in reliance on, a contract takes the contract out of the statute of frauds. See *In re Marriage of Benson*, 36 Cal.4th 1096, 1108-1109 (2005); *Secrest v. Security Nat'l Mortg. Loan Trust 2002-2*, 167 Cal.App.4th 544, 555-57 (2008). This same theory has been expanded to "enforce other contracts that violate the statute of frauds in Civil Code section 1624(a)." *In re Marriage of Benson*, 36 Cal.4th at 1109 (citing *Maddox v. Rainoldi*, 163 Cal.App.2d 384, 390 (1958)) (other citation omitted). "[T]o constitute part performance, the relevant acts either must 'unequivocally refer []' to the contract, or 'clearly relate' to its terms." Id. at 1109 (internal citation and citations omitted). In addition to having partially performed, the party

seeking to enforce the contract must have changed position in reliance on the contract to such an extent that application of the statute of frauds would result in an unjust or unconscionable loss. *McGirr v. Gulf Oil Corp.*, 41 Cal.App.3d 246, 252-53 (1974); *Monarco v. Lo Greco*, 35 Cal.2d 621, 623-24 (1950); *Wilk v. Vencill*, 30 Cal.2d 104, 108 (1947); *Seymour v. Oelrichs*, 156 Cal. 782, 794-96 (1909).

As alleged in the Complaint, Plaintiff asserts that in reliance of Defendant's assurances that it would fully execute the Agreement, Plaintiff had (among other actions): (1) executed all documents requested and sent them to Defendant; (2) assisted and continued to assist Defendant in its defense of its litigation matter; (3) transitioned all clients and accounts to Defendant; (4) transferred all required assets and terminated the Austin ProEquity office lease; (5) returned all company property to Defendant; (6) adhered to the Agreement's noncompete and non-disparagement clauses; and (7) and provided all other required deliverables to Defendant. Id. at ¶¶ 41-47, 86 (stating Plaintiff "rely[ed] on Turner, Sheldon, and Fanzo's representations that the company would perform").

Plaintiff alleges that there was an agreement on sales price, but that Defendant then required the written agreement. Although it is unclear why Plaintiff took the abovementioned actions without the agreement being signed, Plaintiff does allege that he relied upon the agreement in taking various actions. Considering the liberal pleading standard used when addressing a Demurrer, the Court finds that the Complaint contains sufficient allegations to support the Fifth Cause of Action.

TENTATIVE RULING #9:

DEMURRER OVERRULED.

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.