April 11, 2025
Dept. 9
Tentative Rulings

1.	**24CV1898**	**WHEDBEE v. MARSHALL MEDICAL**
Petition for Relief from Claims Presentation		

There is no notice of hearing, and therefore, the Petition also does not comply with Local Rule 7.10.05.

Plaintiff brings this Petition for Relief from Claims Presentation Requirements of Government Code § 945.4, pursuant to Government Code § 946.6. Plaintiff's Petition seems to be lacking important detail, including why it was impossible to discover that the crisis worker was a County employee, whether the claim to the County was denied, or deemed to be denied and why. The Petition merely states that Plaintiff was unaware and could not have been aware of the identity and employer of the crisis worker, and that is why the claim was untimely.

The County opposes the Petition on three grounds: it is procedurally defective due to lack of proper service; the Court lacks jurisdiction; and Plaintiff failed to meet her burden of proof.

First, the County argues that the Petition must be denied because Plaintiff failed to provide Notice of Hearing, and the Petition was not properly served according to the requirements of Government Code § 946.6(d). The Petition was served only by mail and not personal service, and no notice of the time and place of the hearing was served. Defective service deprives the court of jurisdiction to act. *See Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 509. Plaintiff argues that Government Code § 946.6(d) does not require personal service and that CCP § 1005 allows service by mail, which the Court tends to agree with. Additionally, Plaintiff argues there was no prejudice to the County as they were able to timely file an Opposition. The Court will overlook the service issues to address the following arguments.

Next, the County argues that the Court lacks jurisdiction to grant the Petition because Plaintiff concedes that her causes of action against the County accrued on or about November 5, 2023, she presented her late claim application on February 20, 2025, and the application was submitted more than one year from the accrual of the cause of action. On the first page of her Petition, Petitioner states: "The cause of action for this wrongful death case accrued on or about November 5, 2023." (Pet., p.1:23-24.) Similarly, in her Exhibit 1 Application For Leave to Present Late Claim (Government Code Section 911.4), Petitioner states that her "causes of action for both Wrongful Death (CCP Section 377.60) and Medical Malpractice though a Survival Action (pursuant to CCP Section 377.20 and CCP Section 377.34)…accrued on or about November 5, 2023 (the date of death)." (Application, p.1:19-21.) In the claim form attached to the Application, Petitioner indicates that her "Damage or injury" occurred on "11-05-2023." Leaving no doubt whatsoever, Petitioner plainly states: "On February 20, 2025, Plaintiff submitted her Application for Leave to Present Late Claim pursuant to Government Code Section 911.4. (Please see that Application attached as Exhibit 1.) Said Application was

submitted more than one year from the accrual of the cause of action." (Pet., p.2: 4-6). The Court agrees.

Lastly, the County argues that Plaintiff has not met her "burden of proving by the preponderance of the evidence the necessary elements for relief." *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1783. "A superior court may properly deny relief under Government Code section 946.6 where there is simply no competent evidence before the trial court upon which it could exercise its discretion." *Id*. (citing *Rodriguez v. County of Los Angeles* (1985) 171 Cal.App.3d 171, 175-177). The County argues that while Plaintiff seems to be invoking Government Code § 946.6(c)(1), there is no evidence provided with the Petition – no declarations, and neither the Petition nor Application are signed under penalty of perjury. The County therefore argues that the moving papers have no evidentiary value, and Plaintiff has failed to meet her burden. The Court agrees.

In her Reply, Plaintiff offers several arguments, including citations to case law, that were not raised in the Petition. The California Court of Appeal has stated that points raised for the first time in a reply brief will ordinarily not be considered because it would deprive the respondent of an opportunity to counter the argument (*Tellez v. Rich Voss Trucking, Inc*. (2015) 240 Cal.App.4th 1052; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754. Plaintiff did not include any explanation as to why these arguments were not raised in the Petition.

TENTATIVE RULING #1:

PETITION 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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2.	**23CV1430**	**PATEL v. LOSCH**
Motion to Compel		

TENTATIVE RULING #2:

APPEARANCES REQUIRED ON FRIDAY, APRIL 11, 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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3.	**24CV2831**	**BROOKE v. BROOKE**
Motion to Dismiss		

Defendant Debbie Sue Brooke dba New Horizons CCA (formerly dba Norcal Care Coordinators) ("Defendant") brings this Motion requesting to be dismissed pursuant to California Code of Civil Procedure ("CCP") § 581.

Defendant requests that the Court take judicial notice of: Certified Copy of Plaintiff David Roy Brooke's Certificate of Death; State of California, Certification of Vital Record, El Dorado County Health and Human Services Agency, Placerville, California, Certificate of Death of David Roy Brooke, local registration number 3202509000112. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Ev. Code § 452(h). Defendant's request for judicial notice is granted.

This matter is an employment action brought in pro per by Plaintiff David Roy Brooke against his legal spouse, Defendant Debbie Sue Brooke. Plaintiff is now deceased, which leaves Defendant as his successor-in-interest and the only individual entitled to continue the pending litigation, pursuant to CCP § 377.31. Defendant requests that the court appoint her as Plaintiff's successor-in-interest and allow her to dismiss the action.

TENTATIVE RULING #3:

MOTION GRANTED.

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

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4.	**PC20170113**	**GETZ v. SERRANO EL DORADO OWNERS ASSOC.**
Motion to Enforce		

Defendant Serrano Associates, LLC ("Defendant") brings this Motion to Enforce Judgment ("Motion") seeking an order that Plaintiff Dean Getz ("Plaintiff" or "Getz") must post a bond to stay enforcement of a stipulated award of fees/costs pursuant to California Code of Civil Procedure ("CCP") §917.9(a)(3) or an order that provides other relief to permit Defendant to begin enforcing the attorney fees and costs only award and judgment.

This Court entered its initial judgment on April 9, 2024 ("Initial Judgment"). Defendant served notice of entry of the Initial Judgment on April 26, 2024. Plaintiff filed a notice of appeal challenging the Initial Judgment on or about June 21, 2024. After Plaintiff appealed the Initial Judgment, the parties entered into a stipulation agreeing to the amount of reasonable attorney fees and costs to be awarded as part of the amended judgment instead of engaging in post-judgment law-and-motion for the court to set the amount of attorney fees and costs that Serrano Associates was entitled to recover.

The parties stipulated that Defendant "shall be awarded Forty-Seven Thousand Five Hundred Ninety-Three Dollars and Sixty-Three Cents ($47,593.63) in costs against … Getz" and "Two Million Five Hundred Thousand Dollars ($2,500,000.00) against … Getz in attorneys' fees." This Court issued an order granting the stipulated award on June 26, 2024. That same day, this Court entered a Judgment Updated With Attorney Fees and Costs ("Updated Judgment") "for a total award of reasonable attorney fees and costs in the amount of Two Million Five Hundred Forty-Seven Thousand Five Hundred Ninety-Three Dollars and Sixty-Three Cents ($2,547,593.63)" in favor of Defendant and against Plaintiff. The Updated Judgment includes a similar award of attorney fees and costs in favor of defendant Serrano El Dorado Owners' Association ("HOA") and against Getz in the total amount of $2,551,685.81. The Updated Judgment, therefore, includes a total award of reasonable attorney fees and costs against Plaintiff of over $5,100,000.00. Defendant served notice of entry of the Updated Judgment on June 28, 2024, and Plaintiff did not appeal it.

After the deadline for Plaintiff to file a notice of appeal to challenge the fees-and-costs award expired, Defendant obtained and recorded an abstract of that judgment. Defendant recorded the Abstract of Judgment in El Dorado County and Sacramento County because title searches conducted by Defendant counsel revealed Plaintiff owned real property in those two counties.

Is enforcement of the costs-only nature of the award and Updated Judgment, in tandem, automatically stayed pending the outcome of the appeal under section 917.1, subdivision (d)? If so, should this Court exercise its discretion under section 917.9 to require Getz to post a bond? Defendant submits no automatic stay applies since Plaintiff never

appealed from the Updated Judgment that awarded the $2.55 million in costs and fees. To the extent Getz argues the automatic stay applies, Defendant moves this Court to exercise its discretion under § 917.9 to 1) require Getz to post a bond and 2) set the amount of that bond as provided under § 917.9(d).

Defendant argues that Plaintiff only appealed the Initial Judgment, which did not include any award of fees or costs, but did not appeal the Updated Judgment, and therefore there is no appellate stay. Defendant cites to *Ziello v. Sup. Ct.* (1999) 75 Cal.App.4th 651, which is distinguishable from the present case because in that case, only the fees were appealed and not the merits of the judgment.

Plaintiff opposes, stating that he is the class representative of a certified class of over 4,000 members of the Serrano El Dorado Owner's Association, in a lawsuit to enforce the applicable CC&Rs related to the obligations of Defendant to pay assessments. Plaintiff admits that the prevailing party is entitled to attorney's fees, but argues that if Plaintiff prevails on the appeal, the award of costs will be vacated and the case will proceed to trial.

CCP § 917.1(a)–(b) identifies the types of judgment for which an appeal does not stay enforcement without an undertaking to secure the judgment and the calculation required to determine the required amount for an undertaking. This statute expressly excludes the requirement to file an undertaking to stay enforcement pending an appeal when the judgment is solely for costs. Section (d) states in full:

> Costs awarded by the trial court under Chapter 6 (Commending with Section 1021) of Title 14 shall be included in the amount of the judgment or order for the purpose of applying paragraph (1) of subdivision (a) and subdivision (b). However, no undertaking shall be required pursuant to this section solely for costs awarded under Chapter 6 (commencing with Section 1021) of Title 14.

Plaintiff argues that since the judgment Defendant now seeks to enforce is solely for costs as exempted by § 917.1(d), no undertaking is required to prevent enforcement pending the outcome of the appeal. Plaintiff cites to *Chapala Management Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, which the Court finds is analogous to the present case. However, as pointed out by Defendant, the appellants in that case appealed from both the judgment and the order awarding fees.

Defendant argues that if a stay does apply, the Court should exercise its discretion to require a bond or undertaking. Defendant cites to *Quiles v. Parent* (2017) 10 Cal.App.5th 130, which addresses California law providing for a discretionary undertaking under §917.9(a)(3). Defendant argues that the award in this case is "large", which is a requirement of *Quiles*, and that when compared to the value of Plaintiff's assets, it becomes even larger.

It would be nonsensical to find that the Updated Judgment should be enforced, when the underlying appeal may vacate the award of costs. However, based on the information gathered and presented by Defendant regarding Plaintiff's real estate transactions and Plaintiff's lack of evidence that he has sufficient assets to satisfy the judgment after appeal, the Court finds imposition of a bond to be reasonable.

TENTATIVE RULING #4:

THE COURT FINDS ENFORCEMENT OF THE UPDATE JUDGMENT IS STAYED, BUT HEREBY ORDERS THAT PLAINTIFF POST BOND IN THE AMOUNT OF $2,955,905.08.

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5.	PC20210396	ESTATE OF SHANNON v. APPLE MOUNTAIN
Motion for Summary Adjudication		

The Notice does not comply with Local Rule 7.10.05.

Defendant Apple Mountain, L.P. dba Apple Mountain Golf Resort ("Defendant") moves the Court for an order granting Summary Adjudication in its favor as to the second cause of action contained in the Second Amended Complaint ("Survival Cause of Action") filed by Plaintiff Pat Ruffet, Personal Representative of the Estate of Brett Shannon ("Plaintiff"). Defendant argues that there is no triable issue of material fact as to Plaintiff's Survival Cause of Action, because there is insufficient evidence to show that Brett Shannon ("Decedent") survived for an appreciable amount of time following the incident.

Standard

Summary judgment and summary adjudication motions are governed by the detailed statutory scheme found in Code Civ. Proc. § 437c. At their core they are based upon a simple inquiry: whether the opposing party can present a triable issue of a material fact that is supported by evidence. See *Barnett v. Penske Truck Leasing* (2001) 90 Cal.App.4th 494, 499. Of course, it is not enough to simply raise a triable issue of fact, the opposing party must present evidence to support the fact. Thus, the motion is also used to discover whether the opposing party possesses evidence to support that triable issue. "The aim of the procedure is to discover, through the use of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial." *Kurokawa v. Blum* (1988) 199 Cal.App.3d 976, 988.

Argument

In a survival action, damages recoverable by a personal representative or successor in interest are limited to "the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement." Code Civ. Proc.,§ 377.34; see *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1256.; California law requires a Plaintiff to allege that the decedent "survived for any period [of time] from the injury which caused [his] death" *Id*. and See *Clark v. HHS*, 2018 Cal. Super. LEXIS 71783, *18 (Cal. Super. Ct. February 5, 2018) (granting leave to amend to allege that the decedent did not die instantaneously).

While Defendant argues that Plaintiff died instantly, even the fact that Plaintiff Rogers was unconscious before checking on Decedent, presents a triable issue of material fact as to whether Decedent could have been alive while Plaintiff Rogers was unconscious.

TENTATIVE RULING #5:

MOTION DENIED.

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6.	PC20190064	MEDINA v. EL DORADO SENIOR CARE
Motion for Attorney's Fees		

On December 16, 2024, the Court entered judgment for Plaintiffs Jefferson L. Medina, Lorna Silay, and Vanessa Michelle Saavedra ("Plaintiffs") against Defendants Benjamin L. Foulk and El Dorado Senior Care, LLC ("Defendants"), in the amount of $250,901.30 for damages and also included reasonable attorney fees and costs on Motion.

Plaintiffs, Jefferson Medina and Lorna Silay, filed their original complaint on January 31, 2019 and their first amended complaint on April 23, 2019. They sought recovery for unpaid wages pursuant to Labor Code §§ 1194 and 218.5. 1 Plaintiff Vanessa Saavedra filed her original complaint in this matter on January 24, 2020. On December 18, 2020, these two cases were ordered consolidated for all purposes. The operative Complaint contains seven causes of action for various wage and hour allegations. The case went through the usual course of discovery and included seven days of trial.

There is no dispute that Plaintiffs as the prevailing party are entitled to reasonable attorney fees; the dispute is what constitutes reasonable. Plaintiffs are requesting $786,039 with a multiplier of 1.75, for a total award of $1,375,568 in attorney fees and $13,183.20 in costs. Attorney Kevin Elliott billed 223.30 hours at a rate of $600 for a total of $133,980.00. Attorney Michael Harrington billed 706.80 hours at a rate of $630 for a total of $445,284.00. Attorney John McIntyre billed 275.70 hours at a rate of $750 for a total of $206,775.00.

As recommended by Plaintiffs, the determination begins with a Lodestar figure. However, in El Dorado County, the hourly rate claimed by Plaintiffs' counsel is not reasonable. In determining the reasonable hourly rate for the attorneys' services, courts usually consider the prevailing rate charged by attorneys of similar skill and experience for comparable legal services in the community and the nature of the work performed. *Serrano v. Unruh (Serrano IV*) (1982) 32 Cal.3d 621, 643. While the Court acknowledges the rates awarded to counsel in Sacramento County, the prevailing rates in El Dorado County are lower. The Court hereby reduces the hourly rates claimed as follows: $350 for Elliott; $380 for Harrington; and, $450 for McIntyre.

An attorney fee award should ordinarily include compensation for all hours reasonably spent, so that the purpose behind the statutory fee authorizations – i.e., to encourage attorneys to vindicate important rights affecting the public interest – are not frustrated or nullified altogether by diluted awards. *Serrano,* 32 Cal.3d at 624, 639. Hours are reasonably spent if, at the time the work was performed, counsel's efforts were reasonable; whether, in hindsight, plaintiff's counsel could have spent fewer hours is irrelevant. See, *Wooldridge v. Marlene Industries Corp*. (6th Cir. 1990) 898 F.2d 1169, 1177.

Plaintiffs' counsel next argues that a multiplier is appropriate because this was a complex case based on analysis of California and Federal law, missing or destroyed records, and the fact that Plaintiffs each required an interpreter. The Court does not agree that this makes for a complex case warranting a multiplier. As counsel states, "McIntyre is a well-experienced attorney with a particular emphasis in wage and hour litigation, with almost 30 years of experience." While the facts may have been more difficult than counsel anticipated, the Court is not persuaded that this wage and hour case was so complex for an attorney with 30 years of wage and hour litigation experience, plus two other attorneys, that it deserves a multiplier. In *Pellegrino v. Robert Half International, Inc.* (2010) 182 Cal.App.4th 278, cited by Plaintiffs, there were multiple motions for summary judgment and summary adjudication, along with 17 days of trial, and an appeal. Even in that case, the total award of attorney fees was $657,561, which was then reduced by 15% before the multiplier of 1.75 was added, for a total of $978,121.98. Plaintiffs cite to this case, without acknowledging that even with 10 more days of trial, the award was still lower than what they are requesting in this case. Additionally, that case was based in Orange County which undoubtedly has a much higher prevailing hourly billable rate. A multiplier will not be applied in this case.

Defendants oppose the Motion, pointing out several instances where they argue the time billed by Plaintiffs' counsel is not reasonable. The Court agrees that the following instances are unreasonable: 1.2 hours for discussion with process server; 3.5 hours to drive to/attend a deposition not properly noticed; 9.2 hours to prepare a motion to compel (whether or not it was not properly served); 4.3 hours to drive to/attend a deposition not properly noticed; 7 hours to take a 2-hour deposition; 4.5 hours to attend a 15-minute CMC; 7 hours to observe a deposition taken by co-counsel; .3 to instruct staff regarding interpreter; 10 hours for driving to/from South Lake Tahoe; 10.7 hours of drive time to take a 1-hour deposition; 7.5 hours of drive time for a 1-hour deposition; 9.2 hours of drive time for client meeting; 6.9 hours of drive time to meet with Defendant; 6.8 hours of drive time for client meeting; 20.7 hours of drive time, making 4 trips for trial. Plaintiffs do not address the entries challenged by Defendants. This equates to a reduction of 47 hours for Harrington and 61.8 hours for McIntyre.

Time spent by paralegals and law clerks may be included where the prevailing practice in the community is for attorneys to bill separately for paralegal and law clerk services. *Guinn v. Dotson* (1994) 23 Cal.App.4th 268-269. The Court agrees that the following should not be billed as attorney time: .5 hours to draft a proof of service; .4 to obtain a hearing date; .5 to check CMC court calendar; 1.3 hours to contact the Court clerk and prepare 2 discovery verifications; 3.5 hours to organize discovery documents; .6 to contact Court clerk regarding interpreter; .3 hours to check court rules; .8 hours to pay a court reporter; 1 hour to communicate with court reporter; .8 hours to communicate with court reporter. Plaintiffs do not address the entries challenged by Defendants. This equates to a reduction of 9.7 hours for Harrington.

The Court hereby finds an award of $421,448 for attorney fees to be reasonable based on a reasonable hourly rate and reasonable hours expended. This calculation is based on 223.30 hours at $350 for Elliott, 650.1 hours at $380 for Harrington, and 213.9 hours at $450 for McIntyre.

TENTATIVE RULING #6:

1. **PLAINTIFFS AWARDED $421,448.00 IN REASONABLE ATTORNEY FEES.**
2. **PLAINTIFFS AWARDED $13,183.20 IN COSTS.**

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

Defendant Lennar Homes of California, Inc. ("Defendant" or "Lennar") brings this Motion to Dismiss ("Motion") based on Plaintiffs' failure to prosecute their claim. The Plaintiffs filed their First Amended Complaint on January 7, 2020, alleging construction defects and damages concerning eleven single-family homes developed and sold by Lennar. The parties later Stipulated to stay the case pending compliance with SB800 prelitigation procedures. On April 13, 2021, the Court entered the Stay, staying the action in its entirety, which remains in effect.

In its Reply, Defendant requests that the Court continue the hearing on this Motion to allow the parties to complete the SB800 process and then address possibly lifting the stay. Defendant argues that Plaintiffs' counsel has been nonresponsive and noncommunicative. The Court expects both sides to engage in meet and confer efforts to resolve the outstanding issues.

TENTATIVE RULING #7:

1. **HEARING CONTINUED TO FRIDAY, JULY 11, 2025, AT 8:30 AM.**
2. **DEFENDANT TO FILE A DECLARATION BEFORE FRIDAY, JUNE 27, 2025, OUTLINING WHETHER THE MOTION STILL NEEDS TO BE ADDRESSED.**

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.

8.	**25CV0035**	**GHUMMAN v. AKA LIQUORS, INC.**
Motion to Dismiss		

Defendant Amandeep Singh brings this Motion to Dismiss on behalf of AKA Liquors, Inc. ("AKA"), arguing that AKA was legally dissolved before the lawsuit was filed and therefore it lacks standing to be sued. The Notice does not comply with Local Rule 7.10.05.

Defendant does not provide when AKA was legally dissolved and terminated but merely states that it occurred prior to the lawsuit being filed on January 6, 2025. Defendant argues that under California Corporations Code § 2010, a dissolved corporation can only be sued for claims arising before dissolution if it still retains assets or obligations. Defendant again states that AKA was fully dissolved before the lawsuit but does not address whether it still retained assets or obligations.

Plaintiffs Rajinder Pal Singh Ghumman and Lavleen Kaur Cheema (collectively "Plaintiffs") oppose the Motion, arguing that AKA was dissolved after the default on the promissory note. Plaintiffs allege that Defendant AKA engaged in the signing and purchase of Missouri Flat Market ("Market") on June 01, 2022. Defendant Amarjit Singh signed a Promissory Note ("Note") and Security Agreement as CEO on behalf of AKA Liquors Inc., on or around June 01, 2022. (Exhibit 1, page 3). The parties executed an amendment to the promissory note on or around August 2, 2022. The terms of that amendment were that final payment was due June 30, 2024. AKA was dissolved on December 31, 2024, per the Certificate of Dissolution filed by Baldev Singh on that same date. (Exhibit 2).

"A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof." (Cal. Corp. Code §2010 subd. (a). "No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof." (Cal. Corp. Code §2010 subd. (b). "…Thus, there is no time limitation for suing a dissolved corporation for injuries arising out of its predissolution activities." (*North American Asbestos Corp. v. Superior Court* (1982) 128 Cal.App.3d 138, 143.

The Court agrees with Defendant that AKA can be sued because it had pending obligations prior to its dissolution. Further, Defendant Amarjit Singh is not an attorney, cannot represent Defendant Kulwant Singh, and cannot bring a motion to dismiss another Defendant in this action, as he cannot represent AKA liquors as the long-standing common law principle is that a corporation must be represented by counsel (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145 [16 Cal.Rptr.3d 555].)

TENTATIVE RULING #8:

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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9.	**24CV0837**	**MCCARTHY v. BAIR**
Motion to Compel		

TENTATIVE RULING #9:

APPEARANCES REQUIRED ON FRIDAY, APRIL 11, 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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10.	**24CV2590**	**CALKINS v. FCA US, LLC**
Demurrer		

This is a lemon law action brought by Plaintiff William Calkins II ("Plaintiff") against Defendant FCA US, LLC ("FCA" or "Defendant"), the parent company of Chrysler, Dodge, Jeep, Ram, Fiat, Alfa Romeo, and Maserati.

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.

***

The Complaint includes 6 causes of action, and FCA demurs to the sixth cause of action for fraudulent inducement – concealment, pursuant to California Code of Civil Procedure ("CCP") § 430.10(e) on the grounds that Plaintiff failed to allege facts sufficient to state a claim.

Defendant argues that the only specific, factual allegations made in the Complaint are that: Plaintiff alleges that to be a resident of El Dorado County, California; Plaintiff claims to have entered into a warranty contract with FCA regarding a 2021 Ram 1500 on or about March 26, 2022; and, Plaintiff claims various "defects and nonconformities" manifested during the warranty period, including engine defects, transmission defects, and electrical defects. (Complaint, ¶¶ 2, 10, 15) Defendant further argues that the remainder of the Complaint consists solely of legal conclusions without any factual information whatsoever, and that Plaintiff does not provide any factual allegations related to the repair history of their vehicle, such as where the vehicle was repaired, how many times it was repaired, or how many days the vehicle was out for repair.

As the basis for the Fraudulent Inducement claim, FCA argues that Plaintiff alleges FCA allowed the vehicle to be sold to Plaintiff "without disclosing that the Subject Vehicle equipped with the 5.7L engine was defective, and which may result in loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine" and that "the Engine Defect can cause the vehicle to fail without warning." (Complaint, ¶ 64) Defendant argues there are no factual allegations whatsoever related to Plaintiff's purchase of the vehicle – such as who sold the vehicle to Plaintiff's, what was said, or what induced Plaintiff to purchase the

vehicle. Defendant argues there is no allegation that FCA even knew or should have known the vehicle was sold to Plaintiff. Defendant states that Plaintiff merely repeats conclusory statements such as allegations that FCA knew Plaintiff's vehicle and its components had defects and that FCA committed fraud by allowing the vehicle to be sold without disclaimers. (Complaint, ¶¶ 64-71)

Defendant argues that Plaintiff never alleges any specific defect in this vehicle, much less that FCA had knowledge of the defect and that Plaintiff relies on ambiguous qualifiers such as a vehicle "can cause the vehicle to fail" or "may result in loss of power," without alleging any other occurrences of failure of similar vehicles, much less actual failure to this specific vehicle. (Complaint, ¶ 64)

Meet and Confer Requirement

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").

FCA states they attempted to meet and confer with Plaintiff's counsel by sending an e-mail, but that no meet and confer has occurred. CCP requires that parties meet and confer in person or telephone. As counsel states in the Demurrer, "this is a straightforward lemon law case" and the Court expects that the parties can engage in meaningful meet and confer efforts prior to engaging in law and motion practice.

TENTATIVE RULING #10:

THE MATTER IS CONTINUED TO FRIDAY, JUNE 6, 2025, AT 8:30 AM IN DEPARTMENT NINE. THE COURT EXPECTS AN UPDATED DECLARATION TO BE FILED BY FCA BEFORE FRIDAY, MAY 16, 2025, DETAILING THE PARTIES' MEET AND CONFER EFFORTS AND WHETHER THE DEMURRER STILL NEEDS TO BE ADDRESSED.

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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