

1. MILLER v. HOME DEPOT USA, INC., ET AL., 23CV1757**Demurrer**

Before the court is the demurrer of defendant Gerardo Alba, doing business as Alba's Roofing (collectively, "Alba") to plaintiff David Miller's ("plaintiff") Complaint.

1. Background

On October 17, 2017, plaintiff and defendant Home Depot USA, Inc. ("Home Depot") entered into a written agreement for the installation of roofing materials at plaintiff's residence in South Lake Tahoe, California. (Compl., ¶ 9.) Home Depot delegated its obligation to complete this work to Alba. (Compl., ¶¶ 12, 57.)

Alba commenced the roofing project in May 2018. (Compl., ¶ 20.) A letter attached to the Complaint states that the project was completed on September 28, 2018. (Compl., Ex. H.) Plaintiff claims that Alba's work was defective (Compl., ¶ 21); and that Alba's "defective repairs and substandard work spanned from January 2019 through April 2021." (Compl., ¶ 45.)

During Spring 2019, Spring 2020, and Spring 2021, plaintiff notified Alba about leaking water. (Compl., ¶ 29.) Alba returned to plaintiff's home during the summer or fall each year in 2019, 2020, and 2021 to attempt repairs. (Compl., ¶ 30.) Most recently, in 2021, Alba replaced three rows of shingles on the south-side dormer in an attempt to ameliorate leaking on the exterior trim, but this only made the leaking worse. (Compl., ¶ 30.) The leaking water caused mold damage. (Compl., ¶ 31.) After Alba and Home Depot failed to resolve the issue, plaintiff hired remediation professionals. (Compl., ¶ 31.)

On October 13, 2023, plaintiff filed his Complaint, asserting causes of action against Alba and Home Depot¹ for: (1) breach of contract; (2) breach of implied warranty; (3) negligence; and (4) negligence per se.

¹ While the First Cause of Action for breach of contract specifically indicates it is "against all Defendants," the other causes of action are silent as to which parties they are against. However, the other causes of action do refer to "defendants," plurally. For the purpose of this demurrer, the court treats each cause of action to be asserted against Alba.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's request for judicial notice of Exhibit 1 (the Complaint).

Pursuant to Evidence Code section 452, subdivision (h), the court also takes judicial notice of the fact that Spring 2019 started on March 20, 2019, and ended on June 21, 2019.

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or accuracy of its factual allegations or the plaintiff's ability to prove those allegations. [Citations.]" (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

4. Discussion

Alba argues that plaintiff's Complaint is barred by the applicable statutes of limitations.²

4.1. *First Cause of Action for Breach of Contract*

The statute of limitations for breach of written contract is four years. (Code Civ. Proc., § 337.) The cause of action accrues when the breach occurs. (*Spear v. Cal. State Auto. Ass'n* (1992) 2 Cal.4th 1035, 1040.)

In this case, the Complaint alleges that Alba's "defective repairs and substandard work spanned from January 2019 through April 2021." (Compl., ¶ 45.) Plaintiff filed his

² Alba also claims that plaintiff cannot state facts sufficient to constitute a cause of action but does not provide any analysis other than the statutes of limitations. (See Dem. at 9:22–25.)

Complaint on October 13, 2023. Ordinarily, under the four-year statute of limitations, any allegations occurring on or before October 12, 2019, would be time barred. However, under Emergency Rule 9 – enacted by the Judicial Council of California in response to the COVID-19 pandemic – the statute of limitations is tolled from April 6, 2020, until October 1, 2020. Consequently, any allegations occurring on or before April 17, 2019, are time barred.

The demurrer is sustained insofar as the Complaint alleges a breach of contract occurred on or before April 17, 2019. Because there is no reasonable possibility that the defect can be cured by amendment, the court denies leave to amend.

4.2. *Second and Third Causes of Action for Breach of Implied Warranty and Negligence*

Code of Civil Procedure sections 337.1³ and 337.15 apply to actions for damages against persons involved in the construction of improvements to real property, and establish four-year and 10-year statutes of limitation for patent and latent defects, respectively.⁴

³ Further undesignated statutory references are to the Code of Civil Procedure.

⁴ Section 337.1 states in part: “(a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing ... the ... construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following: [¶] (1) Any patent deficiency in the ... construction of an improvement to ... real property; [¶] (2) Injury to property, real or personal, arising out of any such patent deficiency; [¶] ... [¶] (e) As used in this section, ‘patent deficiency’ means a deficiency which is apparent by reasonable inspection.”

Section 337.15 states in part: “(a) No action may be brought to recover damages from any person ... who ... performs ... the ... construction of an improvement to real property more than 10 years after the substantial completion of the ... improvement for any of the following: [¶] (1) Any latent deficiency in the ... construction of an improvement to ... real property. [¶] (2) Injury to property, real or personal, arising out of any such latent deficiency. [¶] (b) As used in this section, ‘latent deficiency’ means a deficiency which is not apparent by reasonable inspection.”

The limitation periods in sections 337.1 and 337.15 start to run upon “substantial completion” of the improvement, and establish the outside limit within which an action must be filed, regardless of when the defect is discovered. That is, while the limitations period may in certain circumstances be less than the limit specified in the statute, it cannot be more. (*Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc.* (2001) 89 Cal.App.4th 638, 649.)

Which of the two statutes applies turns on whether the defect is latent or patent. “Whether a construction defect is latent or patent depends on whether it is ‘apparent by reasonable inspection.’ (§§ 337.1, subd. (e); 337.15, subd. (b).) A patent defect ‘is one which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence. [Citations.] This is contrasted with a latent defect, one which is hidden and which would not be discovered by a reasonably careful inspection. [Citations.]’” [¶] ‘Whether a defect is apparent by reasonable inspection is a question of fact.’ [Citations.]” (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 644.) Thus, the court cannot say as a matter of law whether the alleged defect was a patent or latent one.

Even assuming, however, that the alleged defect was a latent one (and the outside limit within which an action must be filed is 10 years), the limitations periods of section 337 (breach of implied warranty based on written contract) and 338 (injury to real property) start to run upon “discovery.” Discovery occurs when the plaintiff suspects, or reasonably should suspect, that someone has done something wrong to the plaintiff, causing the injury (here, “wrong” is not used in a technical sense, but in a lay one). (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397–398; *Landale-Cameron Court, Inc. v. Ahonen* (2007) 155 Cal.App.4th 1401, 1407 (*Landale*); *Mills, supra*, 108 Cal.App.4th at pp. 643–644.) “A plaintiff has reason to suspect when he has notice or information of circumstances to put a reasonable person on inquiry.” (*Landale, supra*, 155 Cal.App.4th at pp. 1407–1408; *Norgart, supra*, 21 Cal.4th at p. 398.)

Here, plaintiff complained to Alba about leaking water as early as Spring 2019. Thus, the three- and four-year statute of limitations under sections 337 and 338, respectively, began to run at the latest by Spring 2019. Plaintiff's claim for breach of implied warranty is subject to a four-year statute of limitations under section 337; and plaintiff's claim for negligence is subject to a three-year statute of limitations under section 338. The last day of Spring 2019 was June 21, 2019. Plaintiff filed his Complaint on October 13, 2023. Thus, even with the tolling provision under Emergency Rule 9, plaintiff's claim for negligence is time barred.

Plaintiff's claim for breach of implied warranty *may* be time-barred, but it is not apparent from the face of the Complaint, which merely alleges that plaintiff complained to Alba about leaking water on an unspecified date in Spring 2019.

Plaintiff, however, argues that the statute of limitations should be equitably tolled. (Opp. at 4:24–5:22.) “Equitable tolling is a ‘judicially created, nonstatutory doctrine’ that ‘suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness.’” [Citation.] The doctrine applies ‘occasionally and in special situations’ to ‘soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.’ [Citation.]” (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 719–720.) “[E]quitable tolling today applies when three ‘elements’ are present: ‘[(1)] timely notice, and [(2)] lack of prejudice, to the defendant, and [(3)] reasonable and good faith conduct on the part of the plaintiff.’ [Citation.] These requirements are designed to ‘balanc[e] ... the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the [operative] limitations statute.’” (*Id.* at pp. 724–725.)

“Where a claim is time-barred on its face, the plaintiff must specifically plead facts that would support equitable tolling. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641; see also *In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 912 [the party

invoking equitable tolling bears the burden of proving its applicability].)” (*Long v. Forty Niners Football Co., LLC* (2019) 33 Cal.App.5th 550, 555.)

Here, plaintiff alleges that he notified Alba about leaking water in Spring 2019, Spring 2020, and Spring 2021. (Compl., ¶ 29.) However, plaintiff has not specifically pleaded lack of prejudice to defendant or reasonable and good faith conduct on the part of plaintiff. Therefore, plaintiff has not met his burden of proving the applicability of equitable tolling.

The court sustains the demurrer as to the Third Cause of Action for negligence. Because there appears to be a reasonable possibility that the defect can be cured by amendment (relating to the application of equitable tolling), the court grants leave to amend.

The court overrules the demurrer as to the Second Cause of Action for breach of implied warranty because it does not appear on the face of the Complaint that the claim is time barred.

4.3. *Fourth Cause of Action for Negligence Per Se*

“[T]he doctrine of negligence per se is not a separate cause of action, but creates an evidentiary presumption that affects the standard of care in a cause of action for negligence.” (*Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 534.) As such, plaintiff’s Fourth Cause of Action for negligence per se fails to state a claim and the demurrer is sustained without leave to amend.

TENTATIVE RULING # 1: THE DEMURRER IS SUSTAINED IN PART, WITH AND WITHOUT LEAVE TO AMEND, AND OVERRULED IN PART. AS TO THE FIRST CAUSE OF ACTION, THE DEMURRER IS SUSTAINED, WITHOUT LEAVE TO AMEND, AS TO ANY ALLEGATION OF BREACH OF CONTRACT OCCURRING ON OR BEFORE APRIL 17, 2019; AS TO THE SECOND CAUSE OF ACTION, THE DEMURRER IS OVERRULED; AS TO THE THIRD CAUSE OF ACTION, THE DEMURRER IS SUSTAINED WITH LEAVE TO AMEND; AND AS TO THE FOURTH CAUSE OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. KUSHNER v. RIGHTPATH SERVICING, LLC, ET AL., 23CV1329**Demurrer**

Before the court is defendant Nationstar Mortgage LLC, doing business as Mr. Cooper's (collectively, "Nationstar") demurrer to plaintiff Robert Kushner's ("plaintiff") Complaint. Defendant U.S. Bank National Association, as trustee for the Certificateholders of Harborview Mortgage Loan Trust 2005-08, Mortgage Loan Pass-Through Certificates Series 2005-08 ("US Bank") joined in the demurrer on April 5, 2024. Plaintiff did not file any opposition.

1. Background

Plaintiff has brought this action seeking to block the foreclosure of his home located in South Lake Tahoe, California. Defendants are Nationstar, Barrett Daffin Frappier Treder & Weiss, LLP, and US Bank.

On June 16, 2005, plaintiff and his wife, Valerie Kushner, as trustees of the Kushner Living Trust Dated December 9, 1991, obtained a loan for \$645,000.00 secured by a deed of trust against real property in South Lake Tahoe. (Request for Judicial Notice ("RJN") Ex. 1.)

On February 15, 2012, an assignment of the deed of trust was recorded to US Bank. (RJN Ex. 2.) On June 29, 2022, a notice of default was recorded. (RJN Ex. 4.) On August 2, 2023, a notice of trustee's sale was recorded. (RJN Ex. 5.)

Plaintiff filed the instant lawsuit on August 8, 2023. The Complaint states causes of action against all defendants for (1) violations of California's Homeowner Bill of Rights; (2) violation of Civil Code section 2923.5; (3) declaratory relief; (4) injunctive relief; and (5) accounting.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants Nationstar's request for judicial notice of Exhibits 1 through 15. However, the truth of the matters

asserted in such documents is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

3. Legal Principles

“[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff’s ability to prove those allegations. [Citations.]” (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives “the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*Blank, supra*, 39 Cal.3d at p. 318.)

4. Discussion

4.1. First C/A for Violation of Homeowner Bill of Rights

“The Homeowner Bill of Rights ([Civ. Code, §§] 2920.5, 2923.4-7, 2924, 2924.9-12, 2924.15, 2924.17-20) ... , effective January 1, 2013, was enacted ‘to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower’s mortgage servicer, such as loan modifications or other alternatives to foreclosure.’ ([Civ. Code,] § 2923.4)” (*Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272.) The statute, however, also emphasizes that “[n]othing in the act that added this section ... shall be interpreted to require a particular result of that process.” (Civ. Code, § 2923.4.)

Plaintiff's Complaint alleges that Nationstar violated Civil Code sections 2923.5,⁵ 2923.6,⁶ 2923.7,⁷ 2924.9,⁸ 2924.11,⁹ and 2924.18.¹⁰

Nationstar contends that plaintiff lacks standing to invoke any statutory rights or protections under the Homeowner Bill of rights ("HBOR") because such protections apply only to first lien mortgages and deeds of trust against "owner-occupied residential real property." (Dem. at 9:24–26 (citing "Civ. Code, § 2924.15, subd. (a)(1)(A)"¹¹.) Civil Code section 2924.15, subdivision (a) provides, "[u]nless otherwise provided, [Civil Code] Sections 2923.5, 2923.7, and 2924.11 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, 'owner-occupied' means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes." (Civ. Code, § 2924.15, subd. (a).) As a preliminary matter, the "owner-occupied residential real property" requirement under Civil Code section 2924.15 only applies to Civil Code sections 2923.5, 2923.7, and 2924.11. It does not

⁵ Civil Code section 2923.5 requires a mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default.

⁶ Civil Code section 2923.6 prohibits "dual tracking," in which a lender proceeds with the foreclosure process while reviewing a loan modification application.

⁷ Civil Code section 2923.7 requires a mortgage servicer to provide a borrower a single point of contact for discussion regarding foreclosure prevention alternatives if the borrower requests one.

⁸ Under Civil Code section 2924.9, subdivision (a), a mortgage servicer must provide written communication to a borrower detailing foreclosure alternatives within five business days after a notice of default is recorded, unless the borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Civil Code section 2923.6.

⁹ Civil Code section 2924.11, subdivision (a) provides, in pertinent part: "If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under [certain] circumstances."

¹⁰ Like Civil Code section 2923.6, Civil Code section 2923.18 prohibits "dual tracking" (i.e., proceeding with foreclosure while an application for a loan modification is pending).

¹¹ Civil Code section 2924.15, subdivision (a) does not include any subparts.

expressly apply to Civil Code sections 2923.6, 2924.9 or 2924.18. Therefore, the court overrules the demurrer as it relates to plaintiff's claims under Civil Code sections 2923.6, 2924.9, and 2924.18.

As for Civil Code sections 2923.5, 2923.7, and 2924.11, Nationstar argues plaintiff fails to allege that (1) the Deed of Trust is a first lien mortgage, (2) the subject property is his principal residence, and (3) the home is security for a loan made for personal, family or household purposes. (Dem. at 10:1–3.) In fact, Nationstar points out, it appears from the recorded Deed of Trust that the loan was made for investment purposes. (Dem. at 10:3–5.) A Second Home Rider attached to the Deed of Trust states, "Occupancy. [Plaintiff] shall occupy, and shall only use, the Property as [his] second home." While the court granted Nationstar's request to take judicial notice of the deed of trust (RJN Ex. 1), the truth of the matters asserted in the document is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

"Standing is a threshold issue, because without it no justiciable controversy exists." (*Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. Of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445.) "Standing goes to the existence of a cause of action." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 128.)

The court agrees with Nationstar that plaintiff has failed to allege facts establishing standing under Civil Code sections 2923.5, 2923.7, and 2924.11. The demurrer is sustained as to these alleged violations. Considering the Second Home Rider attached to the deed of trust, it does not appear reasonably possible that plaintiff can cure the deficiency through amendment. Therefore, the court denies leave to amend.

4.2. Second C/A for Violation of Civil Code section 2923.5

Civil Code section 2923.5 requires a mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default. Paragraph 17 of the Complaint alleges, "Defendants violated the provisions of

Civil Code § 2923.5 in that they recorded a notice of default even though they had not contacted Plaintiffs in person or by telephone in order to assess the financial situation of Plaintiffs and explore options for Plaintiffs to avoid foreclosure.” (Compl., ¶ 17.)

Nationstar argues that the Notice of Default includes a declaration of compliance dated January 26, 2022, signed under penalty of perjury, stating that Nationstar “has contacted the borrower to assess the borrower’s financial situation and explore options for the borrower to avoid foreclosure as required under California Civil Code Section 2923.55(b)(2). Thirty days have passes [sic] since the initial contact was made.” (Dem. at 10:17–22 (citing RJN Ex. 4).) While the court granted Nationstar’s request to take judicial notice of Exhibit 4, the truth of the matters asserted in Exhibit 4 is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) At the demurrer stage, the court must accept all properly pleaded allegations as true. (*Blank, supra*, 39 Cal.3d at p. 318.) Therefore, the demurrer is overruled as to the Second C/A for violation of Civil Code section 2923.5.

4.3. Third C/A for Declaratory Relief

In his Third C/A for declaratory relief, plaintiff claims there is a dispute regarding the amount plaintiff owes on the mortgage. Plaintiff contends that \$453,468.09 is owed and defendant contends that \$465,104.42 is owed. (Compl., ¶ 24.)

In its demurrer, Nationstar argues that plaintiff’s declaratory relief claim does not allege an actual controversy. However, Nationstar also argues that plaintiff’s declaratory relief claim is based on his alleged non-receipt of a pre-foreclosure notice that his loan was in default, and about compliance with the 120-day waiting period under 12 C.F.R section 1024.41, subdivision (f)(1)(i). (Dem. at 11:19–22.) The court rejects Nationstar’s argument because plaintiff has pleaded an actual controversy involving justiciable questions relating to the rights or obligations of a party. The demurrer is overruled as to the Third C/A for declaratory relief.

4.4. Fourth C/A for Injunctive Relief

“Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted. [Citation.]” (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973 [a permanent injunction is attendant to an underlying cause of action].) As such, the court finds that plaintiff has failed to state a claim. The court sustains the demurrer. Because there is no reasonable possibility that the defect can be cured by amendment, the court denies leave to amend.

4.5. Fifth C/A for Accounting

A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. (*Brea v. McGlashan* (1934) 3 Cal.App.2d 454, 460; 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 819, p. 236.) The purpose of the accounting is, in part, to discover what, if any, sums are owed to the plaintiff.

Here, there is no allegation that any sum of money is owed to plaintiff. Therefore, the court finds that plaintiff has failed to state a claim for accounting. Further, there does not appear to be a reasonable possibility that the defect can be cured by amendment because this is an action based on plaintiff’s default on his mortgage payment. Therefore, the court denies leave to amend.

TENTATIVE RULING # 2: THE DEMURRER IS SUSTAINED IN PART, WITHOUT LEAVE TO AMEND, AND OVERRULED IN PART. AS TO THE FIRST CAUSE OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND REGARDING THE ALLEGED VIOLATIONS OF CIVIL CODE SECTIONS 2923.5, 2923.7, AND 2924.11, AND OVERRULED REGARDING THE ALLEGED VIOLATIONS OF CIVIL CODE SECTIONS 2923.6, 2924.9, AND 2924.18; AS TO THE SECOND AND THIRD CAUSES OF ACTION, THE DEMURRER IS

OVERRULED; AND AS TO THE FOURTH AND FIFTH CAUSES OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.