

**1. BANK OF AMERICA, N.A. v. MITCHELL, 25CV0065****Motion for Judgment on the Pleadings**

Pursuant to Code of Civil Procedure section 438, plaintiff moves for judgment on the pleadings. Plaintiff's counsel declares he made good faith attempts to meet and confer with defendant by telephone at least five days prior to filing the motion, but did not receive any response. (LaForge Decl., ¶¶ 2–3; see Code Civ. Proc., § 439, subd. (a).)

Defendant did not file an opposition.

Pursuant to Evidence Code section 452, subdivision (d), the court grants plaintiff's request for judicial notice of Exhibit 1 (plaintiff's complaint) and Exhibit 2 (defendant's answer) filed in this matter.

A plaintiff may make a motion for judgment on the pleadings on the grounds that the complaint states facts sufficient to constitute a cause of action against the defendant, and the answer does not state facts sufficient to constitute a defense to the complaint. (Code Civ. Proc., § 438, subd. (c)(1)(A).)

Plaintiff's limited complaint alleges one common count for money damages from a delinquent credit card account. Defendant's answer does not deny owing the debt and states he hopes to resolve the matter with a negotiated payment plan. It appears to the court, however, that defendant attempts to assert a statute of limitations defense. He alleges the credit card account was closed over six years ago and no written agreement has existed between the parties within the last four years.

The court orders plaintiff to submit further briefing on the alleged statute of limitations issue.

**TENTATIVE RULING # 1: THE COURT ORDERS PLAINTIFF TO SUBMIT FURTHER BRIEFING ON THE ALLEGED STATUTE OF LIMITATIONS ISSUE. PLAINTIFF'S SUPPLEMENTAL BRIEF SHALL BE FILED AND SERVED NO LATER THAN MAY 9, 2025, AND DEFENDANT'S RESPONSE, IF ANY, SHALL BE FILED AND SERVED NO LATER THAN MAY 23, 2025. THE**

HEARING ON THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 30, 2025, IN  
DEPARTMENT FOUR.

**2. PIMOR, ET AL. v. VANHEE WOODWORKS, 23CV0578****Motion to Compel Compliance with Court Order and Request for Additional Sanctions**

Pending is plaintiffs' motion to compel defendant's compliance with this court's November 8, 2024, order requiring defendant to serve further responses to plaintiffs' Request for Production (Set One), Numbers 9, 10, 11, and 15, and pay plaintiffs a monetary sanction of \$500.00 within 30 days of the date of service of the notice of entry of order. Plaintiffs also seek additional monetary and issue sanctions.

Defendant did not file an opposition.

Plaintiffs' counsel served the order upon defendant by mail on November 13, 2024. However, defendant did not produce the requested documents or pay the monetary sanction. On January 24, 2025, plaintiffs' counsel sent defendant a second copy of the order and warned they would seek increased sanctions. Defendant responded to other items in the email but disregarded the November 8, 2024, discovery order. To date, defendant has not produced the requested documents or paid sanctions as ordered.

When a party fails to obey an order compelling inspection, copying, testing, or sampling, "the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)." (Code Civ. Proc., § 2031.320, subd. (c).)

This action arises out of allegations that defendant breached its contract with plaintiffs in the course of performing a residential remodel on plaintiffs' home. Plaintiffs allege the project quickly got off schedule and the cost increased 80 percent over six months without explanation. Plaintiffs filed suit for intentional fraud, breaches of contract, and negligence. Defendant's cross-complaint alleges that the increases in project costs were caused by plaintiffs' conduct when they "made multiple additions to

their remodel project, altering original plans, and increasing [defendant's] financial investment in the project." (Def.'s Cross-Compl., ¶¶ 9–10.)

The requested documents at issue concern the general contractor's scheduling documents for the residential remodel project and change orders in their original format with metadata preserved.

Given defendant's failure to comply with the November 8, 2024, order, the court orders defendant to produce the requested documents in plaintiffs' Request for Production (Set One), Numbers 9, 10, 11, and 15, and pay plaintiffs a monetary sanction of \$2,172.49<sup>1</sup> (in addition to the \$500.00 monetary sanction imposed on November 8, 2024) no later than May 23, 2025.

Additionally, the court finds that issue sanctions are proper in this case as "that which is required to protect the interests of the party entitled to, but denied, discovery." (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) The following designated facts are hereby established against the defendant: (1) defendant, by and through its managing agent, failed to present change orders to plaintiff in accordance with the parties' contract; (2) defendant, by and through its managing agent, failed to obtain prior written authorization for all change orders defendant issued (or failed to issue) to plaintiffs in connection with the residential remodel; (3) defendant, by and through its managing agent, committed a material breach of the parties' contract in the course of the residential remodel by failing to abide by the protocols set forth in the "Project Change Control Procedure;" (4) defendant, by and through its managing agent, committed fraud by retroactively generating change orders with signatures and presenting them to plaintiffs as though they had been previously approved; (5) defendant, by and through its managing agent, failed to schedule the needed,

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<sup>1</sup> Having reviewed and considered the declaration of plaintiffs' counsel, the court finds that a monetary sanction of \$2,172.49 is appropriate under the Civil Discovery Act, representing seven hours of legal work at \$300.00 per hour, plus the \$60.00 filing fee and \$12.49 electronic submission filing fee.

competent, personnel for the residential remodel; (6) defendant, by and through its managing agent, was responsible for the delays in the residential remodel by failing to schedule needed, competent, personnel for the project; (7) defendant, by and through its managing agent, committed intentional fraud against plaintiffs by billing for work that did not actually occur; and (8) defendant, by and through its managing agent, made material misrepresentations to plaintiffs with respect to the progress of work to induce plaintiffs to pay excessive monies for work that had never been completed.

**TENTATIVE RULING # 2: PLAINTIFFS' MOTION IS GRANTED. DEFENDANT IS ORDERED TO SERVE VERIFIED, FURTHER RESPONSES TO PLAINTIFFS' REQUEST FOR PRODUCTION (SET ONE) NUMBERS 9, 10, 11, AND 15 AND PAY PLAINTIFF A TOTAL MONETARY SANCTION OF \$2,672.49 (\$2,172.49 FOR THE INSTANT MOTION PLUS THE \$500.00 SANCTION IMPOSED ON NOVEMBER 8, 2024) NO LATER THAN MAY 23, 2025. ADDITIONALLY, THE EIGHT DESIGNATED FACTS LISTED HEREIN ARE HEREBY ESTABLISHED AGAINST DEFENDANT AS ISSUE SANCTIONS.**

**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.**

**3. FREUD v. BALIBRERA, 23CV1519****Motion to Hold Defendant in Violation for Failure to Comply with Court Order**

Before the court is plaintiff's motion to hold defendant in contempt for failing to comply with this court's December 16, 2024, order requiring defendant to produce the documents designated in plaintiff's October 18, 2024, notice of deposition within 30 days after the date of service of the notice of entry of order. Plaintiff served the court order by mail on December 18, 2024. Plaintiff claims defendant appeared for deposition on January 18, 2025, but produced incomplete records.

Pursuant to Code of Civil Procedure section 2022.030, plaintiff also requests monetary and terminating sanctions. Specifically, plaintiff requests the court strike defendant's answer to the complaint and allow plaintiff to take defendant's default.

On April 11, 2025, plaintiff's counsel filed a declaration of defendant's non-opposition to the motion. Additionally, plaintiff's counsel declares that, on April 2, 2025 (after filing the instant motion), he received a text message from defendant implying he did not intend to respond to any further discovery, this motion, nor attend any further deposition. (Grego Decl., ¶ 3 & Ex. A.)

Based on defendant's repeated abuses of the discovery process, and stated intention not to comply with this court's December 16, 2024, order, the court concludes that terminating sanctions are proper in this case, as lesser sanctions would be ineffective in motivating defendant to comply with his discovery obligations. (See *J.W. v. Watchtower Bible & Tract Soc'y of New York, Inc.* (2018) 29 Cal.App.5th 1142, 1171.) Defendant's answer to the complaint is hereby stricken.

Additionally, the court imposes a monetary sanction against defendant in the amount of \$1,125.00 (three hours of legal work at \$375 per hour).

**TENTATIVE RULING # 3: PLAINTIFF'S MOTION IS GRANTED. THE COURT IMPOSES TERMINATING AND MONETARY SANCTIONS AGAINST DEFENDANT AS FOLLOWS:**

DEFENDANT'S ANSWER TO COMPLAINT IS HEREBY STRICKEN, AND DEFENDANT SHALL PAY PLAINTIFF A MONETARY SANCTION OF \$1,125.00 NO LATER THAN MAY 30, 2025. 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.

**4. CAPOSSELE, ET AL. v. KISSMAN, 25CV0670****Petition to Release Property from Mechanics Lien**

The court grants the petition to release property from the mechanics lien (El Dorado County Records, Instrument No. 2023-0032327).

Petitioner also requests attorney fees in the total amount of \$1,280 (representing four hours of legal work at \$340 per hour). Code of Civil Procedure section 1032 provides that the prevailing party in an action is entitled to recover its costs. (Code Civ. Proc., § 1032, subd. (b).) Among the items recoverable as costs under Code of Civil Procedure section 1032 are “(10) Attorney fees, when authorized by any of the following: [¶] (A) Contract. [¶] (B) Statute. [¶] (C) Law.” (Code Civ. Proc., § 1033.5, subd. (a)(10).)

Petitioner has not cited any legal authority for an award of attorney fees in this case. Therefore, the request for attorney fees is denied without prejudice.

**TENTATIVE RULING # 4: THE PETITION TO RELEASE PROPERTY FROM MECHANICS LIEN IS GRANTED. THE REQUEST FOR ATTORNEY FEES IS DENIED WITHOUT PREJUDICE. 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.**



**5. WAGNER v. FIRSTPV, INC., ET AL., 23CV0893**

**(A) Cross-Complainant Service Finance Company's Motion for Summary Adjudication**

**(B) Status Conference**

**TENTATIVE RULING # 5: ON THE COURT'S OWN MOTION, THE MOTION FOR SUMMARY ADJUDICATION IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 2, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.**

**APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, APRIL 18, 2025, IN DEPARTMENT FOUR FOR THE STATUS CONFERENCE.**

**6. JACKSON v. PG&E CORP., ET AL., 24CV2285****(A) Defendant Mountain F. Enterprises, Inc.'s Demurrer****(B) Defendant Mountain F. Enterprises, Inc.'s Motion to Strike****Defendant Mountain F. Enterprises, Inc.'s Demurrer**

Defendant Mountain F. Enterprises, Inc. ("defendant") generally and specifically demurs to the second cause of action in plaintiff's complaint for trespass to timber on the grounds that it is uncertain and fails to state a claim. (Code Civ. Proc., § 430.10, subds. (e), (f).) Alternatively, defendant demurs to the first cause of action for trespass to land on the ground that it is a duplicative cause of action.

Defense counsel declares she met and conferred with plaintiff prior to filing the instant demurrer, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Haas Decl., ¶¶ 7–11 & Exs. B, C.)

**1. Background**

The complaint alleges that on November 21, 2021, plaintiff's spouse witnessed a truck with the logo that said something like "Mountain Express" drive onto plaintiff's property. A man got out of the truck, fired a chainsaw, and began cutting into a log which had been prepared by plaintiff's spouse to be milled. (Compl., ¶ 25.) The "Mountain Express" truck and the personnel within the truck were allegedly agents of defendant. (Compl., ¶ 26.) Plaintiff alleges her spouse had signs located near the logs which read, "DO NOT CUT. LEAVE ALONE. KEEP OUT." (Compl., ¶ 27.) However, defendant allegedly disregarded these signs. (Compl., ¶ 27.) Plaintiff's spouse allegedly advised the man to leave the property, and he did. (Compl., ¶¶ 29–31.)

Plaintiff's spouse allegedly observed defendant on plaintiff's property several times during the weeks subsequent to November 21, 2021. (Compl., ¶ 33.)

On December 1, 2021, a truck bearing a Mountain Enterprises logo was allegedly observed leaving plaintiff's property "with a Christmas Tree tied to the side, which had

obviously been cut while Mount Enterprises was on [plaintiff's property]." (Compl., ¶ 34.) The man driving the vehicle on December 1, 2021, was allegedly the same man that was on plaintiff's property on November 21, 2021. (Compl., ¶¶ 34–35.)

## **2. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's request to take judicial notice of the contents of the court's file in this action.

## **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." (*Amarel v. Connell* (1998) 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 facts 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. Trespass to Timber**

To state a claim for trespass to timber, the plaintiff must allege: (1) plaintiff owned the property; (2) the defendant intentionally entered, or recklessly or negligently entered, plaintiff's property and cut down or damaged their trees on the property; (3) the defendant did so without plaintiff's permission; (4) plaintiff was harmed; and (5) defendant's actions were a substantial factor in causing that harm. (CACI No. 2002; Code Civ. Proc., § 733.)

In this case, plaintiff's complaint alleges that defendant's agent drove onto plaintiff's property, fired a chainsaw, and began cutting into logs which had been prepared by

plaintiff's husband to be milled. (Compl., ¶¶ 25–26.) A little over a week later, plaintiff's husband observed a truck bearing defendant's logo leaving plaintiff's property "with a Christmas Tree tied to the side, which had obviously been cut while [defendant] was on [plaintiff's property]." (Compl., ¶ 34.)

Defendant does not articulate the reason it believes the trespass to timber claim is uncertain. But, defendant claims that plaintiff must allege specific facts as to how defendant either cut down trees or took timber from the property. (Dem. at 7:12–13.) The court disagrees and finds that plaintiff has sufficiently alleged that, with respect to the first incident, defendant cut down or damaged plaintiff's trees on plaintiff's property. The court agrees with defendant that the allegations regarding the Christmas Tree tied to defendant's truck is conclusory because it assumes, without factual allegations, that defendant cut down said tree on plaintiff's property.

Because plaintiff has sufficiently pleaded a cause of action for trespass to timber, the demurrer is overruled.

#### **4.2. Trespass to Land**

Defendant argues that the first cause of action for trespass to land should be dismissed with prejudice because it is a duplicative of the cause of action for trespass to timber. California courts have recognized this as a basis for sustaining a demurrer. (See *Rodrigues v. Campbell Industries* (1978) 87 Cal.App.3d 494, 501 [finding demurrer was properly sustained without leave to amend as to cause of action that contained allegations of other causes and "thus add[ed] nothing to the complaint by way of fact or theory of recovery"]; see also *Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1135 [demurrer should have been sustained as to duplicative causes of action].)

Plaintiff argues that the trespass to land claim and trespass to timber claim raise different theories of liability and carry a different measure of damages. The court agrees. Trespass to land differs from trespass to timber in that it does not require the

plaintiff to prove that the defendant cut down or damaged trees. If plaintiff does not prove that defendant cut down or damaged her trees, she may still be able to prove trespass to land. Additionally, the trespass to timber claim provides for treble damages. (Code Civ. Proc., § 733.) The demurrer to the first cause of action for trespass to land is overruled.

**Defendant Mountain F. Enterprises, Inc.'s Motion to Strike**

Pursuant to Code of Civil Procedure sections 435 and 436, defendant moves to strike the following portions of plaintiff's complaint related to punitive, treble, and double damages: Paragraphs 71 and 78, as well as Paragraphs 3 and 4 of the prayer for relief.

**1. Punitive Damages**

Civil Code section 3294 allows a plaintiff to recover punitive damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding punitive damages, "[m]alice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

Defendant argues that plaintiff's prayer for punitive damages is not supported by specific facts demonstrating that defendant acted with oppression, fraud, or malice. The court agrees. There are no allegations that defendant acted with oppression, fraud, or malice, when it allegedly trespassed onto plaintiff's property and cut down or damaged

plaintiff's trees. The mere existence of the signs on plaintiff's property that read, "DO NOT CUT. LEAVE ALONE. KEEP OUT[ ]" does not mean that defendant acted with oppression, fraud, or malice. Therefore, the court grants the motion to strike allegations concerning punitive damages in Paragraphs 71 and 78, as well as Paragraph 4 of the prayer for relief, with leave to amend.

## **2. Treble Damages**

Civil Code section 3346, subdivision (a) provides that "[f]or wrongful injuries to ... trees ... upon the land of another, or removal thereof, the measure of damages is three times such sum as would compensate for the actual detriment, except that where the trespass was casual or involuntary, or that the defendant ... had probable cause to believe that the land on which the trespass was committed was his own ..., the measure of damages shall be twice the sum as would compensate for actual detriment...." (Civ. Code, § 3346, subd. (a).)

"Although neither [Civil Code section 3346 or Code of Civil Procedure section 733] expressly so provides, it is now settled that to warrant such an award of treble damages it must be established that the wrongful act was willful and malicious." (*Caldwell v. Walker* (1963) 211 Cal.App.2d 758, 762 [internal citations omitted].)

Plaintiff's opposition does not address the issue of treble damages.

As previously discussed, plaintiff's allegations do not rise to the level of malice. Therefore, the court strikes the allegations concerning treble damages in Paragraph 78, as well as Paragraph 3 of the prayer for relief, with leave to amend.

The court denies the motion to strike the allegations concerning double damages, which are required where the trespass is casual or involuntary.

**TENTATIVE RULING # 6: THE DEMURRER IS OVERRULED. THE MOTION TO STRIKE IS GRANTED IN PART WITH LEAVE TO AMEND AND DENIED IN PART. THE ALLEGATIONS REGARDING PUNITIVE AND TREBLE DAMAGES IN PARAGRAPHS 71 AND 78, AS WELL AS**

PARAGRAPHS 3 AND 4 OF THE PRAYER FOR RELIEF SHALL BE STRICKEN. THE ALLEGATIONS REGARDING DOUBLE DAMAGES IN PARAGRAPH 78 SHALL NOT BE STRICKEN. 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.

**7. KUMAR v. KOHS, ET AL., SC20180225**

**Motion for Sanctions and Dismissal**

**TENTATIVE RULING # 7: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 2, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.**



**8. URBAN SUNRISE, LLC, ET AL. v. VOGT, ET AL., 22CV0024**

**Motion for Attorney Fees**

**TENTATIVE RULING # 8: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 2, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.**