1. PIMOR, ET AL. v. VANHEE WOODWORKS, 23CV0578

Motion to Compel Appearance at Deposition

Pursuant to Code of Civil Procedure section 2025.450, plaintiffs move to compel the appearance of Jeff VanHee, the managing agent of defendant VanHee Woodworks, at deposition within 30 days of notice of entry of order. Plaintiffs also seek a monetary sanction of $2,812.80. Plaintiffs' counsel declares she met and conferred with defendant prior to filing the instant motion, as required under Code of Civil Procedure section 2025.450, subdivision (b)(2). (Holmes Decl., ¶¶ 13–14 & Ex. K.)

Defendant did not file an opposition to the instant motion.

Code of Civil Procedure section 2025.450 provides: "If, after service of a deposition notice, a party to the action or … employee of a party … without having served a valid objection … fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (a).) Code of Civil Procedure section 2025.450, subdivision (g)(1) provides: "If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).)

In this case, on March 5, 2025, plaintiffs served defendant the notice of deposition for its principal agent, Jeff VanHee, to take place on March 20 and 21, 2025. (Holmes Decl., ¶ 11 & Ex. J.) Defendant did not serve any written objection. (Holmes Decl., ¶ 12.)

On March 20, 2025, Mr. Vanhee failed to appear for the deposition. (Holmes Decl., ¶ 13 & Ex. K.) Plaintiffs' counsel contacted defense counsel to inquire about the non-appearance. A paralegal from defense counsel's office left a voicemail for plaintiffs' counsel indicating that defendant would be obtaining new legal representation. (Holmes Decl., ¶ 14.) To date, plaintiffs' counsel has not received any further information regarding Mr. VanHee's non-appearance. (Holmes Decl., ¶ 15.)

The court notes that on May 30, 2025, Mr. VanHee filed a substitution of attorney to represent himself in pro per (technically, Mr. VanHee is not a named defendant; the only named defendant is VanHee Woodworks).

The court grants plaintiffs' motion to compel. Mr. VanHee shall be required to appear for deposition within 30 days of notice of entry of the order. Having reviewed the declaration from plaintiffs' counsel, the court finds that $2,812.80 is a reasonable sanction under the Civil Discovery Act.

TENTATIVE RULING # 1: PLAINTIFFS' MOTION TO COMPEL IS GRANTED. JEFF VANHEE SHALL BE REQUIRED TO APPEAR FOR DEPOSITION AND PAY PLAINTIFFS A MONETARY SANCTION IN THE TOTAL SUM OF $2,812.80 WITHIN 30 DAYS OF THE NOTICE OF ENTRY OF ORDER. 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. CALLAHAN v. POTTS, ET AL., 23CV0236

Motion for Summary Judgment

Pursuant to Code of Civil Procedure section 437c, defendants Craig Potts and Potts Properties, LLC (collectively, "defendants") move for summary judgment on plaintiff's complaint on the grounds that plaintiff failed to exhaust the arbitration remedy prior to filing suit.

1. Background

This is a breach of contract action arising from a failed attempt to open a cannabis dispensary in South Lake Tahoe, California.

On February 20, 2019, the parties executed a Memorandum of Understanding ("MOU") concerning the business venture. (Compl., Ex. A.) Plaintiff alleges defendants breached the MOU by failing to pursue acquisition of certain real property and a cannabis license. (Compl., ¶ 16.)

Paragraph 7 of the MOU provides in relevant part, "All disputes arising out of the agreement shall be referred to and resolved by a recognized arbitration and/or mediation, based in the State of California that has jurisdiction over the dispute or in a country acceptable by both parties." (Defs.' Stmt. of Undisputed Material Facts ("UMF") No. 2.)

On January 24 and 30, 2023, Michael Callahan (a licensed California attorney who is also plaintiff's father) sent written correspondence to defendant Craig Potts. (Pltf.'s UMF No. 15.) The January 24 letter states in part, "Colton Callahan is my son. I am also a California attorney but am writing to you in the former capacity based upon what I know of his and your history." (Callahan Decl., Ex. C.) The letter mentions arbitration but does not expressly request it: "Before escalating this matter, I wanted to reach out to you to see if you are prepared to do the right thing, which would be to settle this matter without excuse. We can waste time and money on arbitration or mediation, but with

the same result – I will prove that you breached the agreement by simply not following through." (Callahan Decl., Ex. C.)

The January 30 letter is labeled "Re: Arbitration Demand of Colton Callahan" and states that plaintiff "hereby make[s] formal demand for arbitration under the terms of said contract." (Callahan Decl., Ex. B.) The letter further states, "Please be advised that within seven days after your receipt of this Demand for Arbitration I will be filing for arbitration on behalf of Colton Callahan to enforce the [MOU]…. The filing will be with JAMS or the American Arbitration Association [AAA]." (Callahan Decl., Ex. B.)

Ultimately, the parties did not arbitrate or mediate the dispute.

On February 14, 2023, plaintiff filed his verified complaint against defendants, alleging one cause of action for breach of the MOU. (Defs.' UMF No. 8.)

On July 17, 2024, defendants filed their original answer that was verified by their attorney.

On July 26, 2024, defendants filed (as a matter of right)[1] their Amended Verified Answer and Affirmative Defenses (the "amended answer") that was also verified by their attorney.[2] (Defs.' UMF No. 11.) The amended answer asserts two affirmative defenses regarding arbitration.

Defendants' Eleventh Affirmative Defense alleges: "Plaintiff has failed to arbitrate or otherwise pursue arbitration and/or mediation and has therefore intentionally waived and relinquished any right to resolve its claims and any controversy set forth in the

[1] Each party has the right to amend its pleadings once without leave of court within a brief time after its original pleading is filed; the defendant can amend his or her answer once without leave of court before a demurrer or motion to strike the answer is filed. (Code Civ. Proc., § 472, subd. (a).)

[2] The verification made by defense counsel states, "I am the attorney for Defendants Craig Potts and Potts Properties, LLC in this action. I have read the [amended answer] and I am informed and believe the matters therein to be true and on that ground alleges [*sic*] that the matters stated therein are true. [¶] I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct."

Complaint on the basis that paragraph 7 of the MOU … requires that all disputes arising out of the agreement shall be referred to and resolved by arbitration and/or mediation."

Defendants' Twelfth Affirmative Defense alleges: "Plaintiff has done acts and failed to act which are inconsistent with its right to demand arbitration and/or mediation and on that basis such acts and omissions constitute a waiver and relinquishment of such right. Under California law the bringing of a suit on the basic contract, without seeking arbitration, is inconsistent with resort to arbitration thereafter and constitutes a waiver of the contractual provisions for arbitration. Plaintiff's Complaint for breach of contract, damages, and specific performance, which are issues which are subject to arbitration under the MOU, should therefore be dismissed with prejudice."

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, the court denies defendants' request to take judicial notice of the AAA Commercial Arbitration Rules and Mediation Procedures finding that the materials are not "necessary, helpful, or relevant" to the instant motion. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.) The parties' MOU states that "[a]ll disputes arising out of the agreement shall be referred to and resolved by a recognized arbitration and/or mediation…." It does not necessarily require the use of AAA.

3. Evidentiary Objections

In his corrected separate statement (filed May 22, 2025), plaintiff raised 10 objections to defendants' UMF. Defendants argue that plaintiff's objections are untimely and should not be considered because they were not included in plaintiff's original separate statement (filed April 21, 2025) and the court's order directing plaintiff to submit a corrected separate statement did not authorize plaintiff to raise new objections.

The court exercises its discretion to consider plaintiff's objections (See Cal. Rules of Ct., Rule 3.1354, subd. (a)) and overrules all of them.

4. Legal Principles

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 11017, 1024.) The evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

5. Discussion

Defendants claim they have a complete defense to plaintiff's breach of contract action where plaintiff allegedly failed to exhaust the required arbitration and/or mediation remedy provided in the MOU, as alleged in the Eleventh Affirmative Defense in defendants' amended answer.

5.1. Verification of Defendants' Amended Answer

"When the complaint is verified, the answer shall be verified." (Code Civ. Proc., § 446.) Plaintiff argues that defendants' amended answer does not comply with Code of

Civil Procedure section 446[3] because it is verified by defense counsel, who did not set forth in his affidavit the reasons why the verification was not made by one of the parties.

When a defendant has filed an unverified answer to a verified complaint, the plaintiff can move to strike the answer or move for judgment on the pleadings on the ground that the unverified answer is equivalent of no answer at all. (*Hearst v. Hart* (1900) 128 Cal. 327, 328.) Here, plaintiff raises the issue in opposition to defendants' motion for summary judgment (as opposed to bringing a motion to strike or motion for judgment on the pleadings) without citing any authority that it is proper for him to do so. Plaintiff did not file a timely motion to strike and, to date, has not filed a motion for judgment on the pleadings. Therefore, the court overrules plaintiff's challenge to the verification of defendants' amended answer.

5.2. Affirmative Defense

In *Ross v. Blanchard* (1967) 251 Cal.App.2d 739, the court recognized that "an agreement to arbitrate is an affirmative defense." (*Id.* at p. 742.)

In *Charles J. Rounds Co. v. Joint Council of Teamsters No. 42* (1971) 4 Cal.3d 888 (*Rounds*), the California Supreme Court stated: "[W]here the only issue litigated is covered by the arbitration clause, and where plaintiff has not first pursued or attempted to pursue his arbitration remedy, it should be held that (1) plaintiff has impliedly waived his right to arbitrate, such that defendant could elect to submit the matter to the jurisdiction of the court; (2) defendant may also elect to demur or move for summary judgment on the ground that the plaintiff has failed to exhaust arbitration remedies;

[3] Code of Civil Procedure section 446 provides in relevant part: "[W]here a pleading is verified, it shall be by the affidavit of a party, unless the parties are absent from the county where the attorney has his or her office, or from some cause unable to verify it, or the facts are within the knowledge of his or her attorney or other person verifying the same. When the pleading is verified by the attorney … he or she shall set forth in the affidavit the reasons why it is not made by one of the parties." (*Id.*, subd. (a).)

and (3) defendant may also elect to move for a stay of proceedings pending arbitration if defendant also moves to compel arbitration. Plaintiff may of course sue preliminarily to enforce its arbitration rights." (*Id.* at p. 899.)

In this case, plaintiffs' breach of contract claim is covered by the arbitration clause in the MOU. The issue is whether plaintiff pursued or attempted to pursue his arbitration/mediation remedy prior to filing suit. Plaintiff argues he did, pointing to the written correspondence to defendant on January 24, 2023,[4] and January 30, 2023. The January 30 letter is labeled "Re: Arbitration Demand of Colton Callahan" and states that plaintiff "hereby make[s] formal demand for arbitration under the terms of said contract." The letter further states, "Please be advised that within seven days after your receipt of this Demand for Arbitration I will be filing for arbitration on behalf of Colton Callahan to enforce the [MOU]…. The filing will be with JAMS or the American Arbitration Association."

Based on the letter of January 30, 2023, the court finds there is a triable issue of material fact as to whether plaintiff attempted to pursue his arbitration/mediation remedy prior to filing suit. Therefore, the motion for summary judgment is denied.

TENTATIVE RULING # 2: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS DENIED. 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

[4] The January 24 letter is from Michael Callahan to Craig Potts. In the first paragraph, Mr. Callahan states that, although he is a licensed attorney in California, he is writing the letter in his capacity as plaintiff's father, not his attorney. Further, the January 24 letter does not expressly request arbitration or mediation.

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. ADRICH v. KALANI'S AT LAKE TAHOE, ET AL., 23CV0980

Motion for Final Approval of Class Action Settlement

Pending is plaintiffs' unopposed motion for final approval of class settlement. The court preliminarily approved the agreement on January 24, 2025.

1. Background

The operative complaint alleges that defendant violated the Labor Code by failing to pay minimum wages, failing to pay overtime, failing to provide meal and rest breaks, failing to provide proper expense reimbursements, failing to pay timely wages at termination, failing to provide accurate itemized wage statements, engaging in unfair business practices, and violating civil penalty provisions recoverable under the Private Attorneys General Act ("PAGA"), Labor Code section 2698, et seq.

Defendant is a restaurant located in South Lake Tahoe, California. Plaintiff Josefina Marquez worked for defendant from approximately March 2021 until approximately May 2023. Plaintiff Daniella Sabrina-Marie Adrich worked for defendant from approximately June 2021 until approximately June 2022. Throughout their employment, plaintiffs were employed in an hourly paid, non-exempt position. Plaintiffs both contend that they and their coworkers were subject to the same unlawful labor practices, including failure to pay wages for all hours worked.

The gross settlement amount is $216,000. The net settlement fund will be $87,663.27 after the class representative service awards, class counsel fees and costs, PAGA/LWDA allocation, and settlement administration costs.

2. Legal Principles

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules Ct., R. 3.769, subd. (g).) The trial court has broad discretion to determine whether a class action settlement is fair. It should consider factors such as the strength of plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; the

amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) But the "list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. [Citation.]" (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In sum, the trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate to all concerned. (*Nordstrom*, *supra*, at p. 581.)

The burden is on the proponent of a class action settlement to show that it is fair and reasonable, but there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.)

3. Class Certification

The court already granted the motion for preliminary approval and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving settlement. The court finds no significant events have occurred that would cause it to change its prior determination that the settlement class met all requirements under Code of Civil Procedure section 382 for certification for settlement purposes at the time it granted plaintiffs' motion for preliminary approval.

Therefore, the court confirms its conditional certification of the settlement class.

4. Settlement Notice to the Proposed Settlement Class

The court has reviewed the settlement notice sent to the proposed settlement class (see Gonzalez Decl., Ex. A) and finds that it is reasonably calculated under all of the

circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 694–695.)

The settlement administrator declares it has received zero requests for exclusion, zero notices of objection, and zero workweek disputes from class members. (Gonzalez Decl., ¶¶ 8–10.)

5. Fairness Determination

Previously, the court found that the settlement was fair and reasonable based on the evidence plaintiffs submitted in support of the motion for preliminary approval. It does not appear that there is any reason for the court to reconsider its decision in this regard.

6. Attorney Fees and Costs

Plaintiffs' counsel seeks a total award of $90,086.74, which is comprised of $71,999.29 in attorney fees and $18,087.45 in reimbursement for costs and expenses. The requested attorney fees represent one-third of the gross settlement. The California Supreme Court in *Lafitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, held that a court has discretion to grant attorney fees in class actions based on the total recovery. (*Id.* at pp. 503–504.)

In the present case, counsel's request for an award equal to one-third of the gross settlement appears to be reasonable, especially in light of counsel's experience and the considerable work involved in litigating the case, the risks and potential value of the claims, as well as the results achieved for the class.

7. Payment to Class Representatives

Plaintiffs seek court approval of $5,000 payments to Daniella Sabrina-Marie Aldrich and Josefina Santana Marquez, respectively, as the named class representatives (for a total of $10,000). The amount is based on the work done by Ms. Aldrich and Ms. Marquez, as well as the risks they took in being named as class representatives, which

could have resulted in an award of attorney fees and costs against them if they lost at trial, as well as the danger of being blacklisted by other employers for suing a former employer.

The amount of the payment does not appear to be unusually great in comparison to the awards approved in other cases. Therefore, it appears that the requested payments to the class representatives are reasonable and the court intends to approve them.

8. Payment to Class Administrator

Plaintiffs also request court approval of an $8,250 payment to Phoenix Settlement Administrators for the costs of administering the settlement. The administrative cost payment appears to be reasonable given the amount of work to be performed in sending out class notices, tracking down missing class members, sending out payments to class members, and providing declarations in support of the motions for class settlement approval. Therefore, plaintiffs have shown that the payment of $8,250 to the class administrator is reasonable and the court will approve the payment.

9. Payment to the LWDA under PAGA

Plaintiffs seek approval of $20,000 for settlement of civil penalties under PAGA, Labor Code section 2698, et seq., 75 percent (or $15,000) of which will be paid to the LWDA pursuant to Labor Code section 2699, subdivision (i) and $5,000 to the Net Settlement Amount for distribution to the participating class members. The amount to be paid for settlement of civil penalties under PAGA appears to be reasonable.

10. Proposed Time of Settlement Payment

In the court's tentative ruling on plaintiffs' motion for preliminary approval of class settlement, the court noted that the parties had not addressed the proposed time of settlement payment to the settlement class members. Under the terms of the settlement agreement, defendant is required to make 36 equal monthly installments of $6,000, accruing from July 1, 2024. The risk of non-payment raises a number of issues, including the issue of proper disposition of the funds if some, but not all payments are

made. The agreement does not address the plaintiffs' remedies in the event of non-payment. The parties may wish to consider an acceleration clause, a short grace period, a stipulation to entry of a judgment, or other remedies appropriate to protect the class members' interests. Or, the parties could provide for an interim payment once a certain number of the installments have bene made. These issues need to be addressed before the settlement can be finally approved.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 13, 2025, IN DEPARTMENT FOUR TO ADDRESS THE PROPOSED TIME OF SETTLEMENT PAYMENTS TO THE SETTLEMENT CLASS MEMBERS.

4. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204

Motion for Sanctions

Pursuant to Code of Civil Procedure sections 2023.010, et seq., 2030.300, subdivision (e), and 2031.320, subdivision (c), plaintiff moves for monetary and terminating sanctions against defendant Propriis, LLC ("defendant") for its alleged failure to respond to discovery and willful refusal to comply with this court's order issued February 28, 2025. Specifically, plaintiff requests a monetary sanction against defendant and its attorney in the amount of $2,355[5] and terminating sanctions striking defendant's answer to the third amended complaint and striking defendant's cross-complaint.

Defendant opposes the motion. Plaintiff filed a reply.

1. Background

On August 14, 2024, plaintiff electronically served defendant with Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production (Set Two). Plaintiff granted a one-week extension, thereby making defendant's response due September 24, 2024. However, defendant failed to serve a response.

In January 2025, plaintiff filed a motion to compel. On February 28, 2025, the court granted plaintiff's motion and ordered defendant to serve a verified response, without objections, to each of the aforementioned discovery requests and pay a monetary

[5] Plaintiff seeks $1,355 for reasonable attorney fees and costs incurred in bringing the instant motion, and an additional $1,000 under Code of Civil Procedure section 2023.050, which concerns requests for the production of documents. That section provides, "in addition to any other sanctions imposed pursuant to this chapter, a court shall impose a [$1,000] sanction … if, upon a request for a sanction made pursuant to Section 2023.040, the court finds any of the following: [¶] (1) The party, person, or attorney did not respond in good faith to a request for the production of documents. … [¶] … [¶] (3) The party, person, or attorney failed to confer in person, by telephone, letter, or other means of communication in writing … with the party or attorney requesting the documents in a reasonable and good faith attempt to resolve informally any dispute concerning the request." (Code Civ. Proc., § 2023.050, subd. (a)(1), (3).)

sanction of $1,390 within 30 days of the notice of entry of order. That same day, plaintiff electronically served defendant the notice of entry of order. Accordingly, plaintiff's deadline to comply with the order was April 3, 2025 (30 days plus two court days for electronic service).

On April 14, 2025, plaintiff wrote to defendant regarding its failure to comply with the court's February 28, 2025, order by not having served a verified response to the discovery requests (plaintiff's counsel acknowledged receiving the $1,390 monetary sanction from defendant (see Sherman Decl., Ex. H)). Defendant did not respond. On April 21, 2025, plaintiff informed defendant in writing that plaintiff would move the court for monetary and terminating sanctions if defendant did not comply with the court's order by April 24, 2025.

2. Discussion

"[T]he court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process: [¶] … [¶] (d) The court may impose a terminating sanction by one of the following orders: [¶] (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process." (Code Civ. Proc., § 2023.030, subd. (d)(1).) A judge also has authority under the common law to impose terminating sanctions for discovery abuses. (*Dept. of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 197 (judge properly imposed terminating sanctions relying on both Code Civ. Proc., § 2023.030 and judge's inherent authority).)

As relevant here, misuses of the discovery process include failing to respond to an authorized method of discovery and disobeying a court order to provide discovery. (Code Civ. Proc., § 2023.010, subds. (d), (g).)

Terminating sanctions, however, "are appropriate only if a party's failure to obey a court order actually prejudiced the opposing party. [Citation.]" (*Moofly Prods., LLC v. Favila* (2020) 46 Cal.App.5th 1, 11.)

Defendant argues the court should not impose terminating sanctions because: (1) defendant intends to serve verified responses to each of the discovery requests without objection prior to the hearing;[6] (2) terminating sanctions would be punitive; and (3) defendant did not "willfully" refuse to comply with the February 28, 2025, order. Defense counsel declares that, between the time the Court's order was issued and plaintiff filed the instant motion, defense counsel was trying to determine whether his law firm was representing defendant, or whether that representation fell to another firm provided by defendant Tahoe Chateau Land Holding, LLC's insurer, who had been informed of the litigation but had not caused an appearance to be made for its insured. (Bluto Decl., ¶ 5.)

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 13, 2025, IN DEPARTMENT FOUR. THE COURT WILL ASK THE PARTIES TO CONFIRM WHETHER DEFENDANT PROPRIIS, LLC HAS SERVED A VERIFIED RESPONSE, WITHOUT OBJECTION, TO PLAINTIFF'S FORM INTERROGATORIES (SET ONE), SPECIAL INTERROGATORIES (SET ONE), AND REQUEST FOR PRODUCTION (SET TWO).

[6] Plaintiff's reply brief appears to imply that defendant has, in fact, served its verified response to the discovery requests. (See Reply at 2:12–13 ("[Defendant] now argues that a terminating sanction is unwarranted based on its representation that it has finally responded to the discovery requests.").)

5. BAILEY v. COUNTY OF EL DORADO, 24CV1675

Demurrer

Pursuant to Code of Civil Procedure section 430.10, subdivision (e), defendant generally demurs to plaintiff's first amended complaint ("FAC"). Defense counsel declares he met and conferred with plaintiff via teleconference prior to filing the instant demurrer, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Little Decl., ¶ 3.)

Plaintiff opposes the demurrer. Defendant filed a reply.

1. Background

On October 15, 2020,[7] the El Dorado County Sheriff's Department, a department of defendant, arrested plaintiff on Emerald Bay Road in South Lake Tahoe, California. (FAC, ¶ 3.) During the arrest, the Sheriff's Department seized plaintiff's personal property, including rare and unique seeds, Bitcoin, hemp strain, a repository of diverse seed genetics, and custom-developed nutrients. (FAC, ¶¶ 3, 8.)

Following the arrest, a criminal action was brought against plaintiff in El Dorado Superior Court Case No. S20CRF0153-1. (FAC, ¶ 4.) The court denied plaintiff bail. (FAC, ¶ 36.)

Plaintiff is of Puerto Rican descent. (FAC, ¶ 29.) He claims that, as a result of his Puerto Rican heritage, he was subject to racial discrimination where he was treated differently than his co-defendants, who did not share plaintiff's Puerto Rican background. (FAC, ¶ 31.)

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[7] Like the original complaint, plaintiff's FAC alleges that the arrest occurred on October 22, 2022. However, plaintiff's booking sheet (which the court judicially noticed in connection with defendant's demurrer to the original complaint) shows that the arrest date was actually October 15, 2020. (See *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 126 Cal.App.4th 497, 536 ["When a court is required to rule on a demurrer, the discretion provided by Evidence Code section 452 allows the court to take judicial notice of a fact or proposition within a recorded document ' "that cannot reasonably be controverted, even if it negates an express allegation in the pleading." [Citation.]' "].)

Ultimately, a jury acquitted plaintiff of the criminal charges. (FAC, ¶ 5.) Upon his acquittal, plaintiff filed a noticed motion in the criminal case for the release of his personal property. (FAC, ¶ 6.) The court granted the motion. (FAC, ¶ 6.)

In December 2023, when plaintiff sought to recover his seized property, he learned that much of the property was either lost or destroyed while in the Sheriff Department's custody or control. (FAC, ¶ 7.)

Plaintiff's FAC asserts two causes of action: (1) deprivation of property rights;[8] and (2) "violation of due process equal protection under state and federal Constitution."

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's unopposed request for judicial notice of Exhibit 1 (original complaint), Exhibit 2 (order sustaining prior demurrer), and Exhibit 3 (FAC).

The court denies defendant's supplemental request for judicial notice of the El Dorado County Sheriff's Office Request for Order and Order from October 15, 2020.

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*

[8] Plaintiff's deprivation of property claim in the original complaint was based on the Equal Protection and Takings Clauses of the California and federal Constitutions. As to the Equal Protection Clause theory, the court sustained the demurrer with leave to amend, as the original complaint failed to specifically identify the specific policy, practice or custom that caused the alleged constitutional violation. As to the Takings Clause theory, the court sustained the demurrer without leave to amend.

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. Deprivation of Property Rights Claim

The FAC alleges defendant violated plaintiff's right to due process under the Fourteenth Amendment of the United States Constitution where defendant deprived plaintiff of a meaningful opportunity to reclaim or challenge the mishandling and destruction of his seized property.

The Fourteenth Amendment due process clause provides that no state may "deprive any person of life, liberty, or property without due process of law." (U.S. Const., 14th Amend., § 1.)

As previously stated in the court's tentative ruling on defendant's original demurrer, "Plaintiff has no cause of action directly under the United States Constitution…. [A] litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983 [Section 1983]." (*Azul-Pacifico, Inc. v. City of Los Angeles* (9th Cir. 1992) 973 F.2d 704, 705.) Similar to the original complaint, the FAC fails to identify Section 1983.

Moreover, a Section 1983 claim typically provides a cause of action against individual persons: state and local officials who violate constitutional and statutory rights while acting "under color of" state law. In *Monell v. Dep't of Soc. Servs.* (1978) 436 U.S. 658, 691, the United States Supreme Court allowed a Section 1983 claim against a local government entity (rather than a person), but only in a limited way. The Supreme Court held that government entities are not liable for the acts of their employees under Section 1983 under the theory of respondeat superior that makes private employers liable for employee actions. Rather, a government entity can be liable only "when execution of a government policy or custom … inflicts the injury." (*Id.* at p. 694; *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 349.)

Thus, a *Monell* claim arises from either "an express government policy" or "a custom or practice so widespread in usage as to constitute the functional equivalent of an express policy." (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 328; *City of Canton, Ohio v. Harris* (1989) 489 U.S. 378, 389 ["a municipality can be liable under § 1983 only where its policies are the 'moving force [behind] the constitutional violation.' "].)

In this case, the FAC identifies several policies of the Sheriff's Department. Plaintiff alleges that the deputies: (1) failed to properly inventory all of plaintiff's seized property, as required under Sheriff's Policy 606.3.1 ("Property and Evidence Documentation"); and (2) failed to perform a confirmatory test on plaintiff's hemp seeds prior to destruction to confirm that the property was actually contraband, as required under Sheriff's Policy 805.2.

However, these policies were not the moving force behind the alleged constitutional violation. Instead, plaintiff alleges that the deputies did not properly follow these policies. But in order for there to be liability under this theory, plaintiff would need to allege that the custom or practice of failing to properly inventory seized property and perform confirmatory testing was so widespread in usage so as to constitute the functional equivalent of an express policy. The FAC makes no such allegation.

Therefore, the demurrer to the first cause of action for deprivation of property is sustained. Because plaintiff has had a previous opportunity to amend, and has not shown there is a reasonable possibility that further amendment can cure the defect, the court denies further leave to amend.

4.2. Due Process / Equal Protection Claim

The FAC alleges defendant violated plaintiff's rights to due process and equal protection under the state and federal Constitutions where plaintiff, who is of Puerto Rican descent, was denied reasonable bail, incarcerated for an unreasonable period of

time as a non-violent defendant, and generally treated differently than plaintiff's co-defendants of non-Puerto Rican descent.

Plaintiff's opposition to the instant demurrer explicitly states that he is bringing this claim under the federal Constitution only, not the California Constitution. Therefore, the court will sustain the demurrer to this cause of action insofar as it alleges liability under the California Constitution without leave to amend.

As it relates to plaintiff's claim under the federal Constitution, the court again notes that plaintiff has not asserted Section 1983, as required.

Plaintiff alleges wrongdoing with respect to: (1) the treatment of his seized property; (2) his bail determination; (3) the criminal charges pressed against him; and (4) public statements made by the Sheriff's Department accusing plaintiff of "international drug trafficking," referencing Puerto Rico, without any evidentiary basis.

Regarding plaintiff's bail determination, the court previously sustained defendant's demurrer regarding the bail allegations without leave to amend, finding that such allegations are barred by the applicable statute of limitations.

Further, plaintiff still fails to identify any policies or customs that are the moving force behind the alleged constitutional violation. Therefore, plaintiff fails to state a *Monell* claim against defendant. The court sustains the demurrer to the second cause of action and, because plaintiff has had a previous opportunity to amend, and has not shown a reasonable possibility that further amendment can cure the defect, the court denies further leave to amend.

TENTATIVE RULING # 5: 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.

6. NAME CHANGE OF MARSHALL, 25CV1087

OSC Re: Name Change

The court needs clarification as the proposed name in the petition is the same as the present name. Moreover, petitioner did not provide the Sheriff with her current legal name for processing a Live Scan report; she only provided her proposed new legal name.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 13, 2025, IN DEPARTMENT FOUR.

7. NAME CHANGE OF MONTOYA, 25CV1086

OSC Re: Name Change

TENTATIVE RULING # 7: PETITION IS GRANTED.

8. VELOCITY INVESTMENTS LLC v. GONZALEZ, 23CV0900

OSC Re: Dismissal

This action was filed on June 8, 2023. To date, there is no proof of service of summons in the court's file.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 13, 2025, IN DEPARTMENT FOUR.