

1. MANFREDI v. LAKELAND VILLAGE OWNERS ASSN., ET AL., 25CV1279**(A) Plaintiffs' Motion to Compel Responses to Special Interrogatories (Set One)****(B) Plaintiffs' Motion to Compel Responses to Request for Production (Set One)****(C) Plaintiffs' Motion to Deem Matters Admitted****Plaintiffs' Motion to Compel Responses to Special Interrogatories (Set One)**

On March 17, 2026, pursuant to Code of Civil Procedure section 2030.290 (failure to serve timely response), plaintiffs filed a motion to compel responses to Special Interrogatories (Set One) propounded upon the following defendants: (1) Felix Wannemacher; (2) Carol McInnis; (3) Allen Gribnau; (4) Lakeland Village Owners Association; and (5) Gary Cerio. Pursuant to Code of Civil Procedure section 2030.290, subdivision (c), plaintiffs' motion requests monetary sanctions, and pursuant to Code of Civil Procedure section 2023.030, plaintiffs' motion requests evidence, issue, and terminating sanctions.

It is the court's understanding that each of the five defendants have served a verified response to the interrogatories. Plaintiffs' notice of motion indicates the defendants served their responses on February 23, 2026, after 5:00 p.m. (plaintiffs claim this was untimely). Because each of the five defendants have served a verified response, the court denies the instant motion to compel as moot.

Plaintiffs' request for an order compelling further responses based on the argument that defendants' untimely responses are insufficient would require a motion under Code of Civil Procedure section 2030.300, subdivision (a) (motion to compel further response). However, no such motion has been submitted to the court.

Plaintiffs' Motion to Compel Responses to Request for Production (Set One)

On March 17, 2026, pursuant to Code of Civil Procedure section 2031.300 (failure to serve timely response), plaintiffs filed a motion to compel responses to Request for Production (Set One) propounded upon the following defendants: (1) Felix

Wannenmacher; (2) Carol McInnis; (3) Allen Gribnau; (4) Lakeland Village Owners Association; and (5) Gary Cerio. Pursuant to Code of Civil Procedure section 2031.300, subdivision (c), plaintiffs' motion requests monetary sanctions.

It is the court's understanding that each of the five defendants have served a verified response to the requests for production. Plaintiffs' notice of motion indicates the defendants served their responses on February 23, 2026, after 5:00 p.m. (plaintiffs claim this was untimely). Because each of the five defendants have served a verified response, the court denies the instant motion to compel as moot.

Plaintiffs' request for an order compelling further responses based on the argument that defendants' untimely responses are insufficient would require a motion under Code of Civil Procedure section 2031.310, subdivision (a) (motion to compel further response). However, no such motion has been submitted to the court.

Plaintiffs' Motion to Deem Matters Admitted

On March 17, 2026, pursuant to Code of Civil Procedure section 2033.280, plaintiffs filed a motion to deem matters admitted against all named defendants in this action on the grounds that defendants served an untimely response to plaintiffs' Request for Admissions (Set One) ("RFA"), which consisted of 150 requests each. Pursuant to Code of Civil Procedure sections 2023.010, subdivision (g) and 2023.030, plaintiffs seek monetary, issue, evidence, and terminating sanctions. Plaintiffs concurrently filed with their motion a declaration in support of their request to propound more than 35 RFAs. (Code Civ. Proc., § 2033.030, subd. (b).) Said declaration was executed by plaintiff Alfredo Manfredi on March 17, 2026.

On April 20, 2026, defendants filed a timely opposition and declaration from their attorney in support thereof. Pursuant to Code of Civil Procedure section 2023.030, defendants seek a monetary sanction in the amount of \$3,635.00 for attorney fees incurred in opposing the instant motion.

On April 24, 2026, plaintiffs filed a timely reply.

1. Background

On December 22, 2025, plaintiffs propounded RFAs on each named defendant. Plaintiffs expressly stated in the RFAs that Request Numbers 14 through 35 were intentionally reserved for later supplementation. The RFAs continue from Numbers 36 through 150. In support of the instant motion, plaintiff Alberto Manfredi declares that, concurrently served with the RFAs was the “Declaration of Alberto Fernando Manfredi In Support of Propounding More Than Thirty-Five Requests for Admission Per Defendant, pursuant to Code of Civil Procedure § 2033.050.” (Manfredi Decl., ¶ 3.) Defendants dispute this and claim they received no such declaration at the time the RFAs were propounded. Attached to the declaration of defense counsel as Exhibit A is a copy of the cover email, discovery requests, and corresponding proof of service propounded upon defendants on December 22, 2025. Neither the cover email, nor the attached proof of service, references Mr. Manfredi’s declaration, and Mr. Manfredi’s declaration is not attached to the RFAs within Exhibit A of defense counsel’s declaration. The court notes that, other than Mr. Manfredi’s declaration executed March 17, 2026 (and filed concurrently with the instant motion), plaintiffs have not submitted a copy of any other declaration in support of a request to propound more than 35 RFAs, and plaintiffs have not provided any proof of service showing such a declaration was propounded upon defendants concurrently with the RFAs on December 22, 2025.

On February 23, 2026,¹ defendants responded to the first 35 RFAs, including Request Numbers 1 through 13 and 36 through 57. Defendants objected to RFAs 58 through 150 on the grounds that they exceeded the statutory limit of 35 requests.

¹ All but one defendant served a verified response on February 23, 2026. The final defendant served an unverified response on February 23, 2026, followed by a verification served on February 26, 2026.

2. Legal Principles

If a party to whom requests for admission are directed fails to serve a timely response, “[t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).” (Code Civ. Proc., § 2033.280, subd. (b).) “The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.” (Code Civ. Proc., § 2033.280, subd. (c).)

3. Discussion

Code of Civil Procedure section 2033.030 limits the number of RFAs a party may propound upon another party as a matter of right to 35. (Code Civ. Proc., § 2033.030, subd. (a).) If more than 35 RFAs (not relating to genuineness of documents) are sought, the propounding party must serve a “declaration of necessity.” (Code Civ. Proc., § 2033.030, subd. (b).) The sole ground for such declaration is that the excess RFAs are justified by the “complexity or the quantity of the existing and potential issues in the particular case.” (Code Civ. Proc., § 2033.040, subd. (a).) Unless a declaration of necessity is attached to the RFAs, the responding party must only answer the first 35 RFAs and an objection can be stated to the balance. (Code Civ. Proc., § 2033.030, subd. (b).)

Plaintiffs have not demonstrated that they attached a declaration of necessity to the RFAs that were propounded upon defendants. The declaration executed on March 17, 2026, does not suffice. Thus, even assuming that defendants’ responses to

the RFAs were untimely, the court finds that defendants have served, before the hearing on the instant motion, verified responses that are in substantial compliance with Code of Civil Procedure section 2033.220, as defendants responded to the first 35 RFAs.

The motion to deem matters admitted is denied. The court declines to impose sanctions against plaintiffs, as requested by defendants.

TENTATIVE RULING # 1:

(A) MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES (SET ONE): THE MOTION IS DENIED AS MOOT.

(B) MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION (SET ONE): THE MOTION IS DENIED AS MOOT.

(C) MOTION TO DEEM MATTERS ADMITTED: THE MOTION 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 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. SHUMATE v. WARD, ET AL., 25CV0687

Plaintiff's Motion to Set Aside Default

TENTATIVE RULING # 2: ABSENT OBJECTION, MOTION GRANTED AS REQUESTED. DEFAULT ENTERED ON MAY 21, 2025, AGAINST DEFENDANT MICHAEL WARD IS HEREBY SET ASIDE. 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. STEPHENS v. LAUB LAW PLLC, ET AL., 25CV1050**(A) Defendant Morgenstern's Demurrer****(B) Defendant Morgenstern's Motion to Strike****Defendant Morgenstern's Demurrer**

Pursuant to Code of Civil Procedure section 430.10, subdivisions (a), (e), and (f), defendant Jordan Morgenstern ("demurring-defendant") generally demurs to the entire third amended complaint ("TAC") filed by plaintiff Jon C. Stephens ("plaintiff") on November 3, 2025, and specially demurs to the first, second, and fourth causes of action alleged therein on the grounds that each of these causes of action is barred by the applicable statute of limitations and is uncertain.

Defense counsel declares she met and conferred with plaintiff on November 26, 2025, and again on December 18, 2025. (Cullinane-Smith Decl., ¶¶ 6, 10 & Exs. 5, 9.)

On February 20, 2026, plaintiff filed a single opposition to demurring-defendant's demurrer, as well as the motion to strike that defendant concurrently filed with the demurrer.

Demurring-defendant filed no reply.

The hearing on this matter was continued from March 13, 2026, based upon a stipulation of the parties filed March 10, 2026.

1. Background

In May 2022, Reliance Standard Life Insurance Company ("RSLI") suspended plaintiff's long-term disability benefits pending receipt of updated medical certification. (TAC, ¶ 16.) In August 2022, plaintiff retained defendant Laub and Laub to represent plaintiff concerning a spousal support modification and the disability benefits issue. (TAC, ¶ 17.) In October 2022, having received no response on behalf of plaintiff, RSLI suspended plaintiff's benefits claim. (TAC, ¶ 19.)

On April 5, 2023, demurring-defendant specially-appeared for defendant Joey Max Laub (managing partner of Laub & Laub) on behalf of plaintiff for a readiness conference in plaintiff's family law case. (TAC, ¶¶ 11, 22.) During this hearing, the court suggested that defendant Lori London act as judge pro tem for an upcoming settlement conference. (TAC, ¶ 23.) However, defendant London had previously represented plaintiff's ex-wife. (TAC, ¶ 23.) Plaintiff immediately objected. (TAC, ¶ 23.) Demurring-defendant advised plaintiff to "just agree," assuring him that any settlement conference proceedings before defendant London would be non-binding. (TAC, ¶ 24.) Plaintiff reluctantly consented on the record but later informed demurring-defendant he would not sign a written waiver. (TAC, ¶ 25.)

Nevertheless, on May 23, 2023, defendant London presided over the settlement conference. (TAC, ¶ 26.) Plaintiff alleges he suffered harm.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants demurring-defendant's unopposed² request for judicial notice of (1) the reporter's transcript in the matter of *Stephens v. Stephens* (El Dorado Super. Ct., Case No. SFL20110189) dated April 5, 2023; and (2) the court docket for *Stephens v. Stephens*.

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

² Plaintiff does not oppose the request for judicial notice; however, he claims demurring-defendant misidentified the case number and date of the transcript. (Opp. at 3:22–26.) Plaintiff asks the court to use the correct information. The court will use the case number and date reflected on the judicially-noticed transcript.

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

“An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.” (Code Civ. Proc., § 340.6, subd. (a).) “It is well settled that the one-year limitations period of [Code of Civil Procedure] section 340.6 ‘is triggered by the client’s discovery of ‘the facts constituting the wrongful act or omission,’ not by his discovery that such facts constitute professional negligence, i.e., by discovery that a particular legal theory is applicable based on the known facts.” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 685.)

Here, as demurring-defendant argues, the one-year statute of limitations under Code of Civil Procedure section 340.6, subdivision (a) applies to all three causes of action alleged against demurring-defendant: professional negligence, IIED, and breach of fiduciary. (See *Stoll v. Superior Court* (9 Cal.App.4th 1362, 1366–1369.) That is because for each of these causes of action, the TAC alleges that demurring-defendant advised plaintiff to waive a conflict of interest, concealed conflicts, and/or compelled plaintiff to appear before his “former adversary” acting as judge pro tem. (TAC, ¶¶ 37, 42.) Therefore, each cause of action arises from demurring-defendant’s performance of professional legal services.

Based on the allegations in the TAC, plaintiff knew demurring-defendant advised him to waive the conflict of interest – the alleged conflict being that defendant London, who

previously represented plaintiff's ex-wife, was the proposed judge pro tem for an upcoming settlement conference – during the readiness conference on April 5, 2023. April 5, 2023, is the only date upon which the TAC alleges demurring-defendant to have acted. (TAC, ¶¶ 14, 22.)

Therefore, the one-year statute of limitations ran on April 4, 2024. Plaintiff did not file his original complaint until April 21, 2025.

Plaintiff argues that he did not reasonably discover that “appreciable harm” occurred until his disability benefits were reinstated in May 2024. (Opp. at 6:24–7:1, 7:8–10.) However, the court rejects this argument. The alleged fact constituting demurring-defendant's wrongdoing was that demurring-defendant advised plaintiff to waive the conflict of interest. The TAC clearly alleges this occurred on April 5, 2023. Additionally, plaintiff argues that additional wrongdoing occurred in May 2023 and May 2024. However, there are no allegations in the TAC alleging that demurring-defendant committed any wrongdoing in May 2023 or May 2024.

Because each cause of action alleged against demurring-defendant is time-barred, the demurrer is sustained. Because plaintiff has had a previous opportunity to amend, and it does not appear reasonably likely that plaintiff can further amend the pleading to cure the statute of limitations defect (it is the court's understanding that demurring-defendant's involvement in this case was limited to the April 5, 2023, readiness conference), the court denies further leave to amend.

Defendant Morgenstern's Motion to Strike

Having sustained the demurrer without leave to amend, the motion to strike is denied as moot.

TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. THE MOTION TO STRIKE IS DENIED AS MOOT. 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. SULLIVAN & ASSOCIATES, INC. v. DIV 15 TECH, INC., ET AL., 25CV1991**Motion to Compel Arbitration**

On January 14, 2026, pursuant to Code of Civil Procedure section 1281.2, defendant DIV 15 Tech, Inc. (“moving defendant”) filed the instant motion to compel arbitration and stay the action.

On March 16, 2026, plaintiff Kevin M. Sullivan & Associates, Inc. (“plaintiff”) filed a timely opposition. On March 20, 2026, moving defendant filed a timely reply.

A hearing was held on March 27, 2026, at which time, counsel for moving defendant clarified that moving defendant is asking the court to order arbitration only between plaintiff and moving defendant, and to stay litigation as to all other parties. The court continued the hearing to May 1, 2026, and ordered any supplemental opposition briefs to be filed by April 13, 2026; and any supplemental reply brief to be filed by April 28, 2026.

On April 13, 2026, plaintiff filed a timely supplemental opposition brief. On April 24, 2026, moving defendant filed a timely supplemental reply.

1. Background

This case arises out of a public works contract commonly known as Lake Tahoe Community College – Student Housing Building Project. Defendant Lake Tahoe Community College District awarded the contract to defendant Creekside. (Compl., ¶ 6.) Creekside allegedly entered into a subcontract with moving defendant for performance of certain portions of the project. (Compl., ¶ 7.) Moving defendant entered into a subcontract with plaintiff for certain portions of the project, including but not limited to cabling and duct work. (Compl., ¶ 11.)

The subcontract between moving defendant and plaintiff includes an arbitration provision. (Mtn., Harrison Decl., Ex. A.)

The complaint alleges moving defendant breached its subcontract with plaintiff by failing to pay plaintiff monies owed under their subcontract. (Compl., ¶ 15.)

The first and second causes of action for breach of contract and quantum meruit, respectively, are against moving defendant only. The third and fourth causes of action for enforcement of stop payment notice and for recovery on prime contractor's payment bond, respectively, are against moving defendant, as well as defendants Creekside Commercial Builders, Inc. (third and fourth causes of action), Lake Tahoe Community College District (third cause of action only) and Harco National Insurance Company (fourth cause of action only). Although the third and fourth causes of action include other defendants, which are not signatories to the arbitration agreement at issue, both causes of action are for claims of payment against the bonding companies of moving defendant and the general contractor for any amounts arising from plaintiff's dispute with moving defendant for unpaid work.

2. Legal Principles

Code of Civil Procedure section 1281.2 provides in relevant part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: [¶] ... [¶] (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc., § 1281.2, subd. (c).)

"If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c), the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order

arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.” (Code Civ. Proc., § 1281.2.)

3. Discussion

Plaintiff does not dispute the validity of its arbitration agreement with moving defendant. Plaintiff opposes the motion on the grounds that arbitration between only plaintiff and moving defendant – without the other defendants in this action – would create a possibility of conflicting rulings on a common issue of law or fact. Plaintiff points to several of moving defendant’s affirmative defenses, which raise issues of apportionment, and accord and satisfaction.

However, the court is persuaded by moving defendant’s argument that plaintiff’s claims against the other defendants are derivative of the first and second causes of action, both of which are against moving defendant only. (See *Federal Ins. Co. v. Superior Court* (1998) 60 Cal.App.4th 1370, 1373 [“In the usual case, a claim against a surety derives from the primary action.”]; see also *Powers Regulator Co. v. Seaboard Surety Co. of New York* (1962) 204 Cal.App.2d 338, 354 [the determination of a subcontractor’s claim against a prime contractor is a condition precedent to any recovery on the insurance bond].) Therefore, there is no possibility of conflicting rulings. The motion to compel is granted. The court orders plaintiff and moving defendant to arbitration of the first and second causes of action. Pending arbitration, the court will stay the litigation as to all other defendants and as to the third and fourth causes of action.

TENTATIVE RULING # 4: THE MOTION TO COMPEL IS GRANTED. THE COURT ORDERS PLAINTIFF SULLIVAN & ASSOCIATES, INC. AND DEFENDANT DIV 15 TECH, INC. TO ARBITRATE THE FIRST AND SECOND CAUSES OF ACTION IN PLAINTIFF’S COMPLAINT.

PENDING ARBITRATION, THE COURT STAYS THE LITIGATION AS TO ALL OTHER DEFENDANTS AND AS TO THE THIRD AND FOURTH CAUSES OF ACTION IN PLAINTIFF'S COMPLAINT.

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. SULLIVAN & ASSOCIATES, INC. v. CITY OF SOUTH LAKE TAHOE, ET AL., 25CV3051**Motion to Compel Arbitration**

On January 14, 2026, pursuant to Code of Civil Procedure section 1281.2, defendant DIV 15 Tech, Inc. (“moving defendant”) filed the instant motion to compel arbitration and stay the action.

On March 16, 2026, plaintiff Kevin M. Sullivan & Associates, Inc. (“plaintiff”) filed a timely opposition. On March 20, 2026, moving defendant filed a timely reply.

A hearing was held on March 27, 2026, at which time, counsel for moving defendant clarified that moving defendant is asking the court to order arbitration only between plaintiff and moving defendant, and to stay litigation as to all other parties. The court continued the hearing to May 1, 2026, and ordered any supplemental opposition briefs to be filed by April 13, 2026; and any supplemental reply brief to be filed by April 24, 2026.

On April 13, 2026, plaintiff filed a timely supplemental opposition brief. Also on April 13, 2026, defendants Roebbelen Contracting, Inc. and Western Surety Company filed a non-opposition to the motion. On April 24, 2026, moving defendant filed a timely supplemental reply.

1. Background

This case arises out of a public works contract commonly known as City of South Lake Tahoe Recreation & Aquatic Center. Defendant City of South Lake Tahoe awarded the contract to defendant Roebbelen. (Compl., ¶ 6.) Roebbelen allegedly entered into a subcontract with moving defendant for performance of certain portions of the project. (Compl., ¶ 7.) Moving defendant entered into a subcontract with plaintiff for certain portions of the project, including hydronic piping and equipment with insulation for the project. (Compl., ¶ 11.)

The subcontract between moving defendant and plaintiff includes an arbitration provision. (Mtn., Harrison Decl., Ex. A.)

The complaint alleges moving defendant breached its subcontract with plaintiff by failing to pay plaintiff monies owed under their subcontract. (Compl., ¶ 15.)

The first and second causes of action for breach of contract and quantum meruit, respectively, are against moving defendant only. The third and fourth causes of action for enforcement of stop payment notice and for recovery on prime contractor's payment bond, respectively, are against moving defendant, as well as defendants Roebbelen (third and fourth causes of action), City of South Lake Tahoe (third cause of action only) and Western Surety (fourth cause of action only). Although the third and fourth causes of action include other defendants, which are not signatories to the arbitration agreement at issue, both causes of action are for claims of payment against the bonding companies of moving defendant, the general contractor, and the bidding party for any amounts arising from plaintiff's dispute with moving defendant for unpaid work.

2. Legal Principles

Code of Civil Procedure section 1281.2 provides in relevant part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: [¶] ... [¶] (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc., § 1281.2, subd. (c).)

"If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c), the court (1) may refuse to enforce the arbitration agreement and may

order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.” (Code Civ. Proc., § 1281.2.)

3. Discussion

Plaintiff does not dispute the validity of its arbitration agreement with moving defendant. Plaintiff opposes the motion on the grounds that arbitration between only plaintiff and moving defendant – without the other defendants in this action – would create a possibility of conflicting rulings on a common issue of law or fact. Plaintiff points to several of moving defendant’s affirmative defenses, which raise issues of apportionment, and accord and satisfaction.

However, the court is persuaded by moving defendant’s argument that plaintiff’s claims against the other defendants are derivative of the first and second causes of action, both of which are against moving defendant only. (See *Federal Ins. Co. v. Superior Court* (1998) 60 Cal.App.4th 1370, 1373 [“In the usual case, a claim against a surety derives from the primary action.”]; see also *Powers Regulator Co. v. Seaboard Surety Co. of New York* (1962) 204 Cal.App.2d 338, 354 [the determination of a subcontractor’s claim against a prime contractor is a condition precedent to any recovery on the insurance bond].) Therefore, there is no possibility of conflicting rulings. The motion to compel is granted. The court orders plaintiff and moving defendant to arbitration of the first and second causes of action. Pending arbitration, the court will stay the litigation as to all other defendants and as to the third and fourth causes of action.

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TENTATIVE RULING # 5: THE MOTION TO COMPEL IS GRANTED. THE COURT ORDERS PLAINTIFF SULLIVAN & ASSOCIATES, INC. AND DEFENDANT DIV 15 TECH, INC. TO ARBITRATE THE FIRST AND SECOND CAUSES OF ACTION IN PLAINTIFF'S COMPLAINT. PENDING ARBITRATION, THE COURT STAYS THE LITIGATION AS TO ALL OTHER DEFENDANTS AND AS TO THE THIRD AND FOURTH CAUSES OF ACTION IN PLAINTIFF'S COMPLAINT.

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. PEOPLE v. \$8,600.00 U.S. CURRENCY, 26CV0532**(A) Claimant's Motion for Return of Property****(B) People's Petition for Forfeiture**

Before the court is (1) claimant Stuart Miller's ("claimant") motion for return of property pursuant to Health and Safety Code section 11488.4, subdivision (h)(1); and (2) the People's petition for forfeiture pursuant to Health and Safety Code section 11488.4, subdivision (j)(5)(C).

1. Background

On July 12, 2025, agents of the South Lake Tahoe Police Department seized \$8,600.00 cash (the "Property") from claimant's apartment in South Lake Tahoe, California, in connection with an arrest of claimant under Health and Safety Code sections 11366 and 11378.

Thereafter, the People initiated an administrative forfeiture of the Property. (Health & Saf. Code, § 11488.4, subd. (j).) On February 13, 2026, in response to the administrative proceedings, claimant filed a verified claim opposing forfeiture. On March 25, 2026, the People filed a petition for forfeiture pursuant to Health and Safety Code section 11488.4, subdivision (j)(5)(C).

Claimant has also filed two separate motions for return of property under Health and Safety Code section 11488.4, subdivision (h)(1): the first motion was filed on February 20, 2026, and the second motion was filed on April 7, 2026. On April 8, 2026, the People filed an opposition to claimant's motion, including a copy of the transcript of claimant's preliminary hearing in the related criminal case, *People v. Miller* (El Dorado Super. Ct., Case No. 25CR1785). On April 16, 2026, claimant submitted a copy of his work paystubs from Stateline Builders.

2. Preliminary Hearing in Case No. 25CR1785

On October 27, 2025, a preliminary hearing was held in *People v. Miller*.

Officer Jessica Neumann testified that, during a Post Release Community Supervision (“PRCS”) search of claimant’s apartment on July 12, 2025, she found large quantities of methamphetamine, baggies, a scale, and a cell phone with messages showing indicia of drug sales. Officer Neumann also located \$8,600.00 cash in the top drawer of the nightstand in claimant’s bedroom. (Opp., Ex. A at 10:1–8.) The cash included denominations of \$100.00 and \$50.00 bills. (Opp., Ex. A 10:9–10.) Based on the large amount of methamphetamine she discovered in the bedroom, Officer Neumann testified “the amount of cash associated with that could be indicative of methamphetamine sales.” (Opp., Ex. A at 10:14–17.)

Officer Neumann advised claimant of his *Miranda* rights and claimant agreed to speak with her. Claimant indicated he worked for a contractor and “was paid via pay checks, which he had the stubs for inside of his residence.” (Opp., Ex. A at 17:18–21.) Officer Neumann reviewed the paystubs, which were located in the same nightstand drawer where the cash was found, but testified she did not recall the amount on the paystubs. (Opp., Ex. A at 17:22–26, 18:14–18.)

Officer Neumann asked claimant how much money he made as a carpenter but claimant did not tell Officer Neumann how much he was paid. (Opp., Ex. A at 25:12–16.) Officer Neumann did not ask claimant why he had so much cash when he was paid via paychecks. (Opp., Ex. A at 25:20–22.)

Jake Herminghaus, then a Detective with the El Dorado County Sheriff’s Department,³ testified that he omitted Officer Neumann’s observation of \$8,600.00 cash from his (Detective Herminghaus’s) report “because it had pay stubs involved with it.” (Opp., Ex. A at 38:23–26.) Mr. Herminghaus explained, “the cash itself could be an indication of sales, especially when it’s ... found in number denominations of tens, twenties, fifties, one hundreds. And in this case, it’s fifties and one hundreds. But it’s

³ Mr. Herminghaus is now an Investigator with the El Dorado County District Attorney’s Office.

also coupled with the paycheck stubs, which were documented. So, I didn't have an opinion if that was directly connected." (Opp., Ex. A at 38:26–39:4.)

The prosecutor followed up on the issue of the cash with Mr. Herminghaus, asking, "when you factor in the cash in with all the other evidence, does that further support your opinion that the methamphetamine here was possessed for purposes of sale?" (Opp., Ex. A at 42:1–4.) Mr. Herminghaus answered, "It does, but I would want to deduct that amount of money to the paycheck and the amount of cash that was there, and the opinion on the extra cash that was there." (Opp., Ex. A at 42:5–8.)

After all the evidence and oral argument was presented, the court held claimant to answer to the charges and stated, in part, "based on what was set forth in the cell phones, and cash, and the baggies being in the kitchen with the scale – count 2, 11366, [claimant] maintained a place for sale." (Opp., Ex. A at 47:21–24.)

3. Legal Principles

Pursuant to Health and Safety Code section 11470, subdivision (f), the following are subject to forfeiture: "All moneys ... furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys ... used or intended to be used to facilitate any violation of Section ... 11378 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses" (Health & Saf. Code, § 11470, subd. (f).)

With respect to such property "for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470." (Health & Saf. Code, § 11488.4, subd. (i)(1).) "In the case of property described in [Health and Safety Code section 11488.4, subdivision (i),] paragraphs (1) and (2), where forfeiture is contested, a judgment of

forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties.” (Health & Saf. Code, § 11488.4, subd. (i)(3).)

As it relates to claimant’s motion for return of property, Health and Safety Code section 11488.4, subdivision (h)(1) provides: “If there is an underlying or related criminal action, a defendant may move for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to subdivisions (a) to (g), inclusive of Section 11470 and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter. The motion may be made prior to, during, or subsequent to the preliminary examination. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing as evidence that probable cause exists to believe that the underlying or related criminal violations have occurred.” (Health & Saf. Code, § 11488.4, subd. (h)(1).)

4. Discussion

Based on the preliminary hearing transcript, the court finds that claimant has failed to meet his burden of demonstrating there is not probable cause to believe that the seized property, \$8,600.00 cash, is forfeitable under Health and Safety Code section 11470, subdivision (f). The evidence shows that officers found large quantities of methamphetamine in claimant’s apartment, as well as baggies and a scale. Indeed, there is probable cause to believe that the seized cash was furnished, or intended to be

furnished, in exchange for methamphetamine, or used or intended to be used to facilitate a violation of Health and Safety Code section 11378, possession of a controlled substance for sale.

Claimant argues that his work paystubs show that the seized cash was obtained from his lawful employment. While that is a valid argument to raise, when considering the totality of the circumstances – including the large quantity of methamphetamine, the baggies, the scale, as well as the dates and amounts listed on the paystubs – it does not negate the fact that there is probable cause to believe that the cash was actually connected to the sale of methamphetamine. Therefore, claimant’s motion for return of property is denied.

The People’s petition for forfeiture shall trail the trial in the related criminal action, *People v. Miller*.

TENTATIVE RULING # 6: CLAIMANT’S MOTION FOR RETURN OF PROPERTY 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 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.

THE PETITION FOR FORFEITURE SHALL TRAIL THE TRIAL IN THE RELATED CRIMINAL ACTION, *PEOPLE V. MILLER* (EL DORADO SUPER. CT., CASE NO. 25CR1785).

7. RGH CONSTRUCTION LLC v. SPEVAK, 25CV2445**Plaintiff / Cross-Defendants' Demurrer to First Amended Cross-Complaint**

On March 27, 2026, pursuant to Code of Civil Procedure section 430.10, subdivision (e), plaintiff / cross-defendant RGH Construction and cross-defendant Robert Hembree (collectively, "cross-defendants") filed a general demurrer to the third and fourth causes of action in defendant / cross-complainant Kristen Spevak's ("cross-complainant")⁴ first amended cross-complaint ("FAXC"), filed February 11, 2026. Cross-defendants' counsel declares he met and conferred with opposing counsel in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Oshinski Decl., ¶ 3.)

On April 20, 2026, cross-complainant filed a timely opposition. On April 23, 2026, cross-defendants filed a timely reply.

1. Background

The court summarizes the allegations within the FAXC relevant to the instant demurrer. In March 2023, cross-complainant contracted cross-defendants, via oral agreement, to serve as the general contractor overseeing a remodeling job at cross-complainant's residence. (FAXC, ¶ 9.)

Cross-defendants allegedly performed defective work, in part, "by failing to flash the ledger boards in the siding system, and failing to properly install windows and doors, including applicable flashing." (FAXC, ¶ 35.) Cross-defendants allegedly caused a pipe to burst inside the home causing damage at the Property in the winter of 2023. (FAXC, ¶ 13.)

Moreover, the FAXC alleges cross-defendants "concealed known defects with the Project, intentionally misrepresented the status of construction of the Project, intentionally misrepresented the financial cost of the Project, and ultimately

⁴ Ms. Spevak brings her cross-complaint in both her individual capacity and in her capacity as trustee of the Kristen Spevak Revocable Trust.

misrepresented that the Project was being carried out in the proper manner.” (FAXC, ¶ 2.) “By way of example, ... Cross-Defendants intentionally misrepresented the days and times Cross-Defendants worked at the Project in an attempt to inflate bills for time worked at the Project; provided knowingly false and inaccurate timelines with respect to various construction stages of the Project and their associated costs in an attempt to secure continued business with Cross-Complainants; and provided knowingly false and inaccurate statements to Cross-Complainants about the progress of the Project at several different stages of the Project.” (FAXC, ¶ 43.)

2. 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 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.)

3. Discussion

3.1. Third C/A for Negligence

“Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury.” (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.)

Cross-defendants argue that the negligence cause of action is barred by the economic loss rule. Economic loss consists of “ ‘ ‘ ‘ damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—

without any claim of personal injury or damages to *other* property....’ ” [Citation.]” (*Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 482 (emphasis added).) “The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise.” (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.)

Cross-complainant counters that the FAXC alleges damage at the property as a result of the pipe burst. (Opp. at 4:11–19, citing FAXC, ¶ 13.) Assuming that cross-complainant alleges the damage was caused to *other* property beyond the scope of work provided for in the parties’ contract, the court would agree that the economic loss rule does not bar this negligence claim. However, the FAXC is not clear on that point. It alleges that the pipe burst caused damage “at the property.” Therefore, the court will sustain the demurrer to this cause of action with leave to amend.

3.2. Fourth C/A for Fraudulent Concealment or Misrepresentation

“The elements of fraud that will give rise to a tort action for deceit are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’ ” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974 (internal quotation marks omitted).) In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.]” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Moreover, “[t]he requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. [Citations.]” (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

Here, cross-complainants' allegations of misrepresentation are not pleaded with the required specificity.

The court rejects cross-defendants' argument that the FAXC fails to allege the required element of intent to defraud. The FAXC alleges cross-defendants made the alleged misrepresentations to inflate bills and secure continued business with cross-complainants. (FAXC, ¶ 43.)

Because the fourth cause of action is not pleaded with the required specificity, the court sustains the demurrer with leave to amend.

TENTATIVE RULING # 7: THE DEMURRER IS SUSTAINED WITH 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.

8. SPRING OAKS CAPITAL SPV, LLC v. COTTLE, 22CV1622**Amended Motion to Set Aside Default and Default Judgment**

Default and default judgment were entered on September 17, 2024.

On April 8, 2026, defendant filed an amended motion to set aside default and default judgment. Proof of service filed April 16, 2026, shows the motion was electronically served upon plaintiff on April 8, 2026. However, this is untimely service by one court day. (Code Civ. Proc., §§ 1005, subd. (b) [requiring 16 court days' notice before hearing], 1013, subd. (e) [adding two court days for electronic service].)

Even if service of the motion were timely made, the court would still deny the motion on the merits.

Defendant claims the judgment is void because: (1) the court did not have subject-matter jurisdiction;⁵ and (2) plaintiff failed to comply with the Fair Debt Buying Practices (Civ. Code, § 1788.50, et seq.), namely, Civil Code sections 1788.52 (requiring a debt buyer to possess certain information before making any written statement to a debtor in an attempt to collect a consumer debt) and 1788.60, subdivision (b) (requiring an authenticated copy of the underlying contract to be submitted to the court).

Each superior court has general subject matter jurisdiction and, subject to limited exceptions not applicable here, can adjudicate any and all cases before them. (See *Long v. Forty Niners Football Co., LLC* (2019) 33 Cal.App.5th 550, 555–556.) The court also notes that, on February 7, 2025, it denied plaintiff's motion to transfer venue, finding that this court does have personal jurisdiction over defendant and that the El Dorado Superior Court is a proper venue for this case.

Next, the requirements under Civil Code section 1788.52 relate to the first initial written statement to a debtor in a debt buyer's attempt to collect a consumer debt. It

⁵ Based on his argument, it appears defendant intended to claim that the court did not have personal jurisdiction over defendant because the underlying incident did not occur in South Lake Tahoe, California, and defendant resides in Pollock Pines, California.

does not impose any pleading requirements that would make the default judgment void in this case.

With respect to defendant's challenge under Civil Code section 1788.60, subdivision (b), the court finds that in support of its request for default judgment, plaintiff submitted a declaration with a copy of the subject-loan agreement attached thereto as Exhibit B, thereby satisfying the requirement under Civil Code section 1788.60, subdivision (b).

Lastly, defendant argues that plaintiff failed to comply with California Rules of Court ("CRC"), rule 3.740, subdivision (f), which provides: "If proofs of service of the complaint are filed or service by publication is made and defendants do not file responsive pleadings, the plaintiff must obtain a default judgment within 360 days after the filing of the complaint. If the plaintiff has not obtained a default judgment by that time, the court must issue an order to show cause why reasonable monetary sanctions should not be imposed. The order to show cause must be vacated if the plaintiff obtains a default judgment at least 10 court days before the order to show cause hearing."

Plaintiff filed its complaint on November 15, 2022. Therefore, under CRC 3.740, plaintiff was required to obtain a default judgment by November 13, 2023 (360 days after the filing of the complaint). Plaintiff did not obtain default judgment until September 16, 2024. The court finds, however, that CRC 3.740, subdivision (f) does not authorize the court to set aside default judgment for plaintiff's failure to comply with the time requirement. The rule specifically contemplates monetary sanctions, only.

Based on the above, the court denies defendant's motion to set aside default and default judgment.

TENTATIVE RULING # 8: DEFENDANT'S MOTION 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 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.