

1. SMITH v. LAKE TAHOE UNIFIED SCHOOL DIST., 26CV2184

Petition for Minor's Compromise

TENTATIVE RULING # 1: ABSENT OBJECTION, PETITION GRANTED AS REQUESTED. OF THE \$50,000 GROSS SETTLEMENT AMOUNT, \$7,500 SHALL BE PAID TO THE RAWLINGS COMPANY FOR REIMBURSEMENT OF THE MEDICAL LIEN AND \$42,500 SHALL BE PAID TO PACIFIC LIFE & ANNUITY SERVICES, INC. TO PURCHASE A SINGLE-PREMIUM DEFERRED ANNUITY FOR THE BENEFIT OF CLAIMANT SUBJECT TO WITHDRAWAL BY COURT ORDER UNTIL THE CLAIMANT HAS REACHED THE AGE OF MAJORITY, AS PROVIDED IN ATTACHMENT 18b(3) TO THE PETITION.

2. CREDITORS ADJUSTMENT BUREAU, INC. v. GRUPE, 22CV1619**Plaintiff's Motion for Summary Adjudication**

On June 29, 2026, pursuant to Code of Civil Procedure section 437c, plaintiff Creditors Adjustment Bureau, Inc. ("plaintiff") filed the instant motion for summary adjudication as to plaintiff's first cause of action for breach of contract against defendant Adam Emile Grupe a/k/a Adam E. Grupe a/k/a Adam Pearsall d/b/a E A L Electric ("defendant").

Defendant filed no opposition.

1. Preliminary Matter

Plaintiff commenced this action on November 3, 2022, as a limited civil action, alleging a total amount of \$7,258.22 in controversy. (See, Compl., ¶ 2.) In the instant motion however, plaintiff alleges that, in October 2024, it sent defendant revised statements and invoices which show a final balance of only \$2,669.37. (Mtn. at 3:17–23, citing Iwahashi Decl., ¶ 12 & Exs. 16, 17.)

Although the amount in controversy is presently less than \$6,500 (the maximum jurisdictional limit of the small claims court for a corporate plaintiff), the court does not have authority to transfer the case to small claims court because this is not a situation where the superior court lacks jurisdiction over the amount at issue. (*Rosenberg v. Superior Court* (1998) 67 Cal.App.4th 860, 866–869; Code Civ. Proc., § 396, subd. (b).)

Nonetheless, the court notes there are potential consequences under Code of Civil Procedure section 1033, subdivision (b) where a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court.

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2. Background

On July 10, 2020, defendant¹ requested SCIF for a quote on an employer's liability policy by submitting an application to SCIF memorialized in a document entitled, "Submission Summary." (Iwahashi Decl., Ex. 1.) Said document contemplates a proposed policy period of July 10, 2020, to July 10, 2021. (Iwahashi Decl., Ex. 1 at p. 3.)

On July 15, 2020, SCIF sent defendant a quote that contemplates a proposed policy period of July 16, 2020, at 12:01 a.m. to July 16, 2021, at 12:01 a.m. (Iwahashi Decl., ¶ 5 & Ex. 2.)

On July 22, 2020, SCIF sent defendant Policy Number 9280182-20 (the "2020 Policy"). (Iwahashi Decl., ¶ 6 & Ex. 3.) The declarations page for the 2020 Policy states the insurance coverage is effective from July 16, 2020, to July 16, 2021, and "shall automatically renew each 7-16 until cancelled." (Iwahashi Decl., Ex. 3.)

On August 2, 2021,² "SCIF sent defendant a proposed quote for the 2021 policy period based on the information provided by the insured during the prior policy period." (Iwahashi Decl., ¶ 7.) SCIF's quote issued August 2, 2021, contemplates a proposed coverage period of July 16, 2021, at 12:01 a.m. to July 16, 2022, at 12:01 a.m. (Iwahashi Decl., Ex. 4.) Mr. Iwahashi, Senior Credit and Collections Analyst for SCIF, declares, "[w]hen SCIF received no objection from defendant, or written notice of cancellation pursuant to the cancellation terms set forth in Part Six, Section D of the Workers' Compensation and Employer's Liability Policy, on July 16, 2021, after the 2020 policy ran its course, the policy renewed to become the 2021 policy with policy no. 9280182-21." (Iwahashi Decl., ¶ 8.)

¹ Based on the information contained in plaintiff's exhibits in support of the instant motion, the court is satisfied that plaintiff has met its initial burden of establishing that defendant Adam Grupe was "doing business as" "E A L Electric."

² Mr. Iwahashi's declaration indicates that August 2, 2021, was "[p]rior to the termination of the 2020 policy." (Iwahashi Decl., ¶ 7.) However, that statement conflicts with the evidence attached to Mr. Iwahashi's declaration, specifically, that the 2020 policy was effective until July 16, 2021. (See, Iwahashi Decl., Ex. 3.)

On August 5, 2021, SCIF sent defendant Policy Number 9280182-21 (the “2021 Policy”), effective July 16, 2021, to July 16, 2022. (Iwahashi Decl., Ex. 4.)

Mr. Iwahashi declares defendant paid nothing towards the premiums on either the 2020 Policy or the 2021 Policy. (UMF Nos. 11, 14; Iwahashi Decl., ¶ 12.)

3. Legal Principles

A plaintiff moving for summary judgment bears the burden to produce admissible evidence on each element of a “cause of action” entitling him to judgment. (Code Civ. Proc., § 437c, subd. (p)(1); see *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287 [disapproved on other grounds by *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826].) This means that plaintiff, who bears the burden of proof at trial by a preponderance of evidence, must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely true than not. (*Aguilar, supra*, at p. 851.) “[O]therwise, he would not be entitled to judgment as a *matter of law.*” (*Ibid.* [emphasis in original]; *LLP Mortgage v. Bizar* (2005) 126 Cal.App.4th 773, 776 [burden is on plaintiff to persuade court there is no triable issue of material fact].) At that point, the burden shifts to the defendant “to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.” (Code Civ. Proc., § 437c, subd. (p)(1).)

4. Discussion

The elements of a breach of contract claim are: (1) existence of a contract; (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach; and (4) the resulting damages to the plaintiff. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

In this case, the alleged agreement is a written insurance agreement entered into by defendant and SCIF. (See, Compl., ¶ 11.) Thereafter, on October 5, 2022, SCIF assigned its rights under the agreement to plaintiff. (UMF No. 10; see Com. Code, § 2210.)

Plaintiff alleges defendant breached the contract by failing to pay the insurance premiums. (Compl., ¶¶ 14, 15.)

The first issue is whether plaintiff has met its initial burden of establishing the presence of a valid underlying agreement between defendant and SCIF. Every contract requires mutual consent. (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 270–271; Civ. Code, §§ 1550, 1565; *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 789.)

“Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. [Citation.]” (*Donovan, supra*, at pp. 270–271.) However, consent may be manifested by a party’s actions. (*Id.*, at p. 271; see, Civ. Code, §§ 1589, 1621.) “ ‘ “The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe. [Citation.] Accordingly, the primary focus in determining the existence of mutual consent is upon the acts of the parties involved.” ’ [Citations.]” (*Monster Energy Co., supra*, at p. 789.)

Here, plaintiff’s undisputed material facts show that, on July 10, 2020, defendant requested SCIF for a quote on a workers’ compensation insurance policy. (UMF No. 2.) On July 15, 2020, SCIF mailed defendant a quote. (UMF No. 3.) On July 22, 2020, SCIF mailed defendant Policy Number 9280182-20. Just over a year later, on August 2, 2021, SCIF mailed defendant a renewal quote. (UMF No. 5.) On August 5, 2021, SCIF mailed defendant Policy Number 9280182-20. (UMF No. 6.) Defendant paid nothing towards the outstanding premiums. (UMF Nos. 11, 14.)

These facts fail to establish that defendant mutually consented to the insurance agreement. Defendant’s request for a quote merely constitutes a solicitation for an offer. (*Eddy v. Sharp* (1988) 199 Cal.App.3d 858.) SCIF’s act of providing a quote to defendant constitutes an offer. (See, *Eddy, supra*, 199 Cal.App.3d at p. 867.) However, plaintiff has presented no evidence of defendant’s acceptance of such offer. Plaintiff’s motion does not include any evidence of defendant’s conduct between SCIF issuing its

quote on July 15, 2020, and SCIF issuing defendant the 2020 Policy on July 22, 2020.

There is also no copy of the insurance agreement and no evidence of the material terms of said agreement.

Because plaintiff has failed to meet its initial burden of persuasion, the court must deny the motion for summary adjudication.

TENTATIVE RULING # 2: PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION 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.

3. HALL v. U-HAUL CO. OF CALIFORNIA, ET AL., 25CV3111

Post-Arbitration Status Conference

This is an employment action. In December 2025, per the stipulation of the parties, the court ordered the parties to submit the matter to arbitration. An evidentiary hearing with the arbitrator was set for September 20, 2026.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 23, 2026, IN DEPARTMENT FOUR.

4. LEE, ET AL. v. SIERRA, 24CV2153

Petition for Minor's Compromise

TENTATIVE RULING # 4: ABSENT OBJECTION, PETITION GRANTED AS REQUESTED.

5. L & J ASSETS v. PREHODA, SC20050069**Motion for Order Nunc Pro Tunc**

On August 31, 2026, pursuant to Code of Civil Procedure sections 187 and 473, subdivision (b), Bag Fund, LLC (“Bag Fund”) filed the instant motion seeking an order nunc pro tunc deeming Bag Fund’s proofs of service attached to the motion as Exhibits G and H (related to service of a certified copy of Bag Fund’s application for renewal of judgment upon the transferees Mark Babo and Doreen Babo (collectively, the “transferees”)) as being received and filed by the court on January 14, 2026 (the applicable statutory deadline under Code of Civil Procedure section 683.180, subdivision (b) for Bag Fund to maintain its lien priority.)

Proof of service attached to the motion indicates it was served upon defendant’s estate (defendant Kenneth Prehoda is deceased), as well as both transferees, via mail on August 31, 2026.

On October 19, 2026, Bag Fund filed a notice that no opposition was filed.

1. Background

On November 4, 2005, plaintiff L&J Assets LLC (“plaintiff”) obtained a default judgment against defendant Kenneth Prehoda (“defendant”) in the amount of \$56,159.94. On February 26, 2007, plaintiff recorded an abstract of judgment in El Dorado County, thereby creating a lien on all of defendant’s real property located within the county. (See, Code Civ. Proc., § 674; *Industrial Indem. Co. v. Levine* (1975) 49 Cal.App.3d 698, 713 [recording of abstract of judgment creates a lien on real property of the judgment debtor located in county where abstract of judgment is recorded].) It appears that, at the time the abstract of judgment was recorded, defendant owned the real property located at 1048 Trout Creek in South Lake Tahoe, California (the “Property”).

In 2008, plaintiff assigned the judgment to Bag Fund. In 2013, defendant recorded a transfer of the Property to his daughter (Bona Prehoda a/k/a Bona Gail a/k/a Bona Gail Hebert). On October 19, 2015, Bag Fund renewed the judgment for 10 years.

In 2018, defendant's daughter recorded a transfer of the Property to Mark Babo and Doreen Babo.

On October 16, 2025, Bag Fund filed another Application for Renewal of Judgment.

On November 5, 2025, Bag Fund allegedly served a certified copy of the Application for Renewal of Judgment on both transferees via substitute service.³ (Atryia Decl., ¶ 8 & Exs. G, H.)

On January 30, 2026, the court granted Bag Fund's motion for a *nunc pro tunc* order deeming its Application for Renewal of Judgment to be recorded in the El Dorado County Recorder's Office as of October 19, 2025.

2. Legal Principles

"A judgment lien on real property is effective only during the period of enforceability of the judgment. [Citations.] Like the judgment, the judgment lien can also be extended by 10 years if renewed. ([Code Civ. Proc.], § 683.180, subd. (a); § 697.310, subd. (b).)" (*Starcevic v. Pentech Financial Services, Inc.* (2021) 66 Cal.App.5th 365, 375.) In order to maintain the lien priority, the judgment creditor must comply with Code of Civil Procedure section 683.180. "Once renewed, '[t]he priority of the judgment lien on an interest in real property remains the same.' [Citations.]" (*Starcevic, supra*, at p. 375.)

As provided in Code of Civil Procedure section 683.180, subdivision (b),⁴ if the interest in real property has been transferred subject to the lien and the transfer has

³ The proofs of service indicate that personal service was performed on the transferees on November 5, 2025. However, as shown in the attached Declaration of Due Diligence, it appears that the person served was actually a John Doe, male, who refused to give his name, with blond hair, about 20 to 25 years old. Copies of the documents were then mailed to the same address where the male was served.

⁴ Code of Civil Procedure section 683.180, subdivision (b) provides: "A judgment lien on an interest in real property that has been transferred subject to the lien is not extended

been recorded, an extension pursuant to this section extends the lien on the property in the hands of the transferee only if the transferee is served notice of the renewal and proof of service is filed within the prescribed time. “[T]he obvious purpose of [Code of Civil Procedure] section 683.180 is to provide notice to third persons that a judgment lien has been extended. [Citation.]” (*Beneficial Financial, Inc. v. Durkee* (1988) 206 Cal.App.3d 912, 917.)

3. Discussion

Based on a filing date of October 16, 2025, Code of Civil Procedure section 683.180 required Bag Fund to personally serve a copy of the Application for Renewal upon the transferees, Mark Babo and Doreen Babo, on or before January 14, 2026, in order to maintain Bag Fund’s lien priority.

On May 18, 2026, Bag Fund filed a motion to extend time for service and authorize alternative service. The court denied the motion on July 24, 2026. Curiously, Bag Fund’s motion filed May 18, 2026, made no mention that it had attempted to personally serve the transferees in November 2025 or completed substitute service on the transferees in November 2025, as Bag Fund now claims. Rather, Bag Fund’s May 18, 2026, motion outlined its efforts to serve the transferees beginning in March 2026.

Code of Civil Procedure section 187 provides: “When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.” (Code Civ. Proc., § 187.)

pursuant to subdivision (a) if the transfer was recorded before the application for renewal was filed unless both of the following requirements are satisfied: [¶] (1) A copy of the application for renewal is personally served on the transferee. [¶] (2) Proof of such service is filed with the court clerk within 90 days after the filing of the application for renewal.” (Code Civ. Proc., § 683.310, subd. (b).)

The court denies Bag Fund relief under Code of Civil Procedure section 187.

Code of Civil Procedure section 473, subdivision (b) authorizes the court to relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's — or their attorney's — mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473, subd. (b).)

Here, the court finds that Code of Civil Procedure section 473, subdivision (b) does not aid Bag Fund because there is no judgment, dismissal, order, or other proceeding taken against Bag Fund and from which Bag Fund seeks to be relieved.

Even if the court had the authority to deem the proofs of service received and filed as of January 14, 2026, the proofs of service do not demonstrate that the transferees were personally served with the certified copy of Application for Renewal of Judgment, as required under Code of Civil Procedure section 683.180, subdivision (b)(1).

The motion is denied.

TENTATIVE RULING # 5: BAG FUND'S MOTION FOR AN ORDER NUNC PRO TUNC 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.

6. HEDLUND v. JOHNSON, 25CV2734**Motion to Enforce Settlement Agreement**

This is a partition action concerning a cabin located on land owned by the United States Forest Service (“USFS”).

On August 17, 2026, pursuant to Code of Civil Procedure section 664.6, plaintiff filed the instant motion to enforce the parties’ written settlement agreement, which became fully executed on July 16, 2026. The motion also includes a request for attorney fees incurred in bringing the motion.⁵

On October 12, 2026, defendant filed a timely opposition, making a counter-request for attorney fees in the amount of \$2,135. (Opp. at 8:17–18.) Defendant’s request for attorney fees is not properly before the court, however, because it was raised in defendant’s opposition brief, not a noticed motion, and the parties have not stipulated to using such procedure. (Code Civ. Proc., § 1033.5, subd. (b)(5)(A).) Therefore, the court does not address defendant’s request for attorney fees in this tentative ruling.

On October 16, 2026, plaintiff filed a timely reply.

1. Background

On July 16, 2026, the parties settled the action in a written settlement agreement that included a stipulation for the court to retain jurisdiction to enforce the settlement agreement under Code of Civil Procedure section 664.6.

The settlement agreement provides that, within 10 days of full execution of the agreement, defendant shall: (1) deposit \$70,000 into a mutually agreed upon account; (2) pay 50 percent of the transfer and recording fees in connection with the transfer of the subject property to include USFS permit transfer. Additionally, defendant shall execute all necessary documents to ensure plaintiff receives the \$70,000 payment.

⁵ “Plaintiff requests that the [court] grant the request for attorney’s fees in the amount of \$3,310.00 if no opposition is filed, in the amount of \$4,710.00 if an opposition is filed and no hearing is held, and in the amount of \$5,460.00 if an opposition is filed and a hearing is held.” (Pltf.’s Mem. Points & Auth. at 8:17–20.)

Upon defendant's deposit into the mutually agreed upon account, plaintiff shall immediately take all necessary steps for the subject property to be transferred free of "all encumbrances, liens or obligation." (Graves Decl., Ex. 1.)

"As a material consideration to the agreement, [plaintiff] represents that [defendant] is receiving the Subject Property with the full capacity to transfer and without any liens, encumbrances, or obligations with full capacity to transfer the Subject Property to [defendant]." (Graves Decl., Ex. 1.)

Defendant drafted a Bill of Sale, which he sent to plaintiff on July 16, 2026, together with the fully executed settlement agreement.

Given that the parties fully executed the settlement agreement on July 16, 2026, defendant's deadline to perform expired July 27, 2026 (the tenth day, July 26, 2026, fell on a Sunday).

On July 24, 2026, plaintiff's counsel sent defense counsel an email stating that plaintiff had some issues with the proposed Bill of Sale, which included language stating that plaintiff relinquishes and sells her interest in the property "free and clear of all liens, encumbrances, structural safety violations, or USFS violations." (Graves Decl., Ex. 3.) Plaintiff's counsel's email stated plaintiff was "willing to warrant that the property is free of liens and encumbrances and known structural safety violations." (Choudhary Decl., Ex. B.) However, the USFS had asked plaintiff to do some spot painting on the roof. Plaintiff received an extension to do the work, which could be done without a permit and likely by defendant, himself. Plaintiff's counsel further stated, "[i]n the event that the USFS requires any other improvements as a condition of transfer, the Bill of Sale needs to be clear that our client will not be paying any money towards those improvements." (Choudhary Decl., Ex. B.)

July 27, 2026, passed without defendant performing his obligations under the settlement agreement.

On August 2, 2026, defendant requested plaintiff to send him “all of the information from USFS” and identify all issues raised by the USFS. (Choudhary Decl., Ex. B.)

On August 3, 2026, plaintiff’s counsel forwarded to defendant documentation showing the “current status with the USFS.” (Choudhary Decl., Ex. C.)

On August 11, 2026, plaintiff’s counsel emailed defendant stating that the USFS is not going to send any type of written confirmation that the only issue they have with the cabin is the spot painting unless they come out and re-inspect the property. (Choudhary Decl., Ex. C.) Counsel also stated plaintiff would sign the Bill of Sale if it is modified to state that the property is free of all “known” structural safety violations and USFS violations. “The property is being sold as-is and [plaintiff] is not going to warrant against latent defects.” (Choudhary Decl., Ex. C.)

Defense counsel informed plaintiff that defendant was prepared to complete the roof paint repair if that is the only issue, but defendant needed verification from the USFS that this is the “only issue so [the parties could] complete the transaction.” (Choudhary Decl., Ex. C.)

Defendant’s opposition to the instant motion indicates that, having completed his investigation regarding additional obligations with the USFS, defendant remains “ready, willing, and able to complete the transaction.” (Choudhary Decl., ¶ 11.)

Plaintiff’s reply brief requests the court to make the following orders: (1) within five days of the order, defendant shall transfer payment to a trust account the parties have apparently agreed to use; (2) within five days after receiving the funds, plaintiff shall execute the Bill of Sale; (3) within 14 days after receiving the executed documents, defendant shall submit his permit application to the USFS; (4) upon the USFS’s issuance of a new special use permit to defendant, the deposited funds will be released to plaintiff, less plaintiff’s 50 percent share of the transfer and recording fees; and (5) that the court shall retain jurisdiction under Code of Civil Procedure section 664.6.

2. Legal Principles

Code of Civil Procedure section 664.6 provides: “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” (Code Civ. Proc., § 664.6, subd. (a).)

Before a judgment may be entered under Code of Civil Procedure section 664.6, the trial court must determine whether the parties entered an enforceable settlement. (*Osumi, supra*, 151 Cal.App.4th at p. 1360.)

Ultimately, the decision of whether or not to enter a judgment based on the parties’ settlement agreement is within the judge’s discretion. (*California State Auto. Ass’n Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 663–664.)

3. Discussion

Defendant takes the position that plaintiff repudiated a material term of the settlement agreement where, following the execution of the settlement agreement, plaintiff’s counsel sent defense counsel an email stating, in part: (1) “the USFS did ask our client to do some spot painting on the roof;” and (2) “[i]n the event that the USFS requires any other improvements as a condition of transfer, the Bill of Sale needs to be clear that our client will not be paying any money towards those improvements.”

Plaintiff denies any repudiation occurring. And, even if repudiation did occur, plaintiff argues that it would not excuse defendant’s nonpayment.

“Anticipatory breach occurs when one of the parties to a bilateral contract repudiates the contract. The repudiation may be express or implied. An express repudiation is a clear, positive, unequivocal refusal to perform [citations]; an implied

repudiation results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible [citations].” (*Taylor v. Johnston* (1975) 15 Cal.3d 130, 137.)

“When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach does in fact occur at such time.” (*Taylor, supra*, 15 Cal.3d at p. 137.)

Here, the settlement agreement provides in relevant part: “As material consideration to the agreement, [plaintiff] represents that [defendant] is receiving the Subject Property with the full capacity to transfer and without any liens, encumbrances, or obligations with full capacity to transfer the Subject Property to Johnson.”

The court finds plaintiff’s counsel’s statement that the USFS had requested some spot painting on the roof — without counsel providing any indication that plaintiff would satisfy the obligation prior to defendant’s deadline to transfer payment — was a clear, positive, unequivocal refusal to transfer the property free of any “obligations.” The court makes this finding despite defendant’s characterization in his opposition brief that plaintiff’s counsel’s statements “raised an issue of potential breach.” (Opp. at 6:24.)

Plaintiff argues that, even if there was repudiation, defendant elected to proceed under the settlement agreement, and therefore, his nonpayment was not excused. The evidence, however, shows that defendant did not proceed under the settlement agreement because the July 27, 2026, deadline passed without defendant performing. The fact that defendant now states he is ready and willing to perform does not change the fact that, as of July 27, 2026, defendant treated the contract as terminated.

The moving party on a motion to enforce bears the burden of proving the agreement is enforceable. A moving party who repudiates the contract is generally not entitled to an order enforcing the agreement.

The court notes that, both parties now appear agreeable to a slightly modified settlement agreement where plaintiff agrees to transfer the property free of all encumbrances, liens, and known obligations, except for the roof spot painting, which defendant is agreeable to handling himself. “Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” (*Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1165–1166; see also, *Terry v. Conlan* (2005) 131 Cal.App.4th 1445 [court erred in granting section 664.6 motion where record demonstrated no meeting of minds concerning material terms of settlement].)

The issue before the court is whether plaintiff is entitled to an order of judgment pursuant to the terms of the settlement agreement. The court finds plaintiff has not met her burden for the requested order, and therefore, the court denies plaintiff’s motion in its entirety.

TENTATIVE RULING # 6: PLAINTIFF’S MOTION IS DENIED IN ITS ENTIRETY. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

7. BORG v. DAGENHART, ET AL., 26CV1777**Motion to Set Expedited Bifurcated Court Trial or Default Prove-Up on Partition Claim**

Pending before the court is plaintiff Michael J. Borg's ("plaintiff") motion, filed August 27, 2026,⁶ to set an expedited bifurcated court trial on the partition cause of action.⁷ Plaintiff's notice of motion does not cite any specific legal authority under which he claims he is entitled to trial setting preference.⁸

On October 13, 2026, defendants Heather Dagenhart and Gibson Canites (collectively, "defendants") filed a timely opposition.

On October 15, 2026, plaintiff filed a timely reply, as well as three supporting declarations. That same day, pursuant to California Rule of Court 3.1300(d), plaintiff separately filed a Supplemental Request to Consider October 14 Reply Declarations. However, the court denies this request as moot because the declarations were authorized filings timely filed with plaintiff's reply papers.

On October 21, 2026, pursuant to California Rule of Court 3.1300(d), plaintiff filed a request for consideration of late-filed papers, all filed that same day, including:

⁶ Plaintiff concurrently filed with his motion an ex parte application for order shortening time, which the court granted on August 27, 2026. The court set a hearing on shortened time for September 11, 2026, in Department Nine, the department to which this case was originally assigned. On August 31, 2026, the court granted defendant Heather Dagenhart's peremptory challenge under Code of Civil Procedure section 170.6. On August 31, 2026, the Presiding Judge reassigned the case to Department Four, and reset the hearing for October 23, 2026.

⁷ Plaintiff's moving papers include the alternative request that, if defaults have been entered, the court set an expedited default judgment prove-up hearing. In his reply brief, plaintiff indicates he withdraws this alternative request. (Reply at 2:2–3.)

⁸ The court notes, however, that plaintiff's memorandum of points and authorities in support of the motion cites to Code of Civil Procedure section 598, which authorizes the court to make an order "that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5." (Code Civ. Proc., § 598.) Plaintiff's reply brief cites, for the first time, Code of Civil Procedure section 1048. Because Code of Civil Procedure section 1048 is new material not cited in plaintiff's moving papers, the court does not consider it.

(1) plaintiff's Limited Supplemental Memorandum regarding foreclosure urgency, corrective service, and expedited partition relief; (2) plaintiff's request for judicial notice; (3) plaintiff's "Notice of Corrective Posting and Request for Directions;" and (4) the declaration of plaintiff's registered process server. The court denies plaintiff's request and therefore does not consider the late-filed documents.

1. Background

Plaintiff's operative complaint, the first amended complaint ("FAC") filed September 15, 2026, alleges causes of action for partition by sale, accounting, financial elder abuse, promissory fraud/intentional misrepresentation, and fraudulent concealment.

With respect to the partition claim, plaintiff alleges the secured loan on the subject-property (3037 Mandolin Way, Placerville, California) is in default. A notice of default was recorded on July 9, 2026. As of October 14, 2026, plaintiff has received no notice of trustee's sale. (Bateman Decl., filed Oct. 15, 2026, ¶ 7.)

On October 7, 2026, defendants filed a motion to strike plaintiff's FAC. A hearing on the motion is currently set for January 8, 2027. A Case Management Conference is currently set in this matter for January 12, 2027.

2. Discussion

Plaintiff's motion technically raises two separate requests: (1) a bifurcated bench trial on the partition claim; and (2) expedited setting of trial on the bifurcated issues.

2.1. Request for Bifurcated Bench Trial on the Partition Claim

Code of Civil Procedure section 598 provides, in relevant part: "The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial

of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5.”

Plaintiff claims that “record ownership, partition entitlement, and manner of partition can be resolved separately from tort claims and ultimate expense allocations. Plaintiff requests reservation of elder-abuse, fraud, punitive-damages, accounting, and contribution issues, with the right to jury trial preserved where applicable. [Citations.]” (Reply at 3:2–6.)

Partition is an equitable proceeding. (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596–597.) While a litigant in a civil action generally has a constitutional right to a jury trial on legal causes of action, there is no such right with respect to equitable causes of action. (*Rincon EV Realty LLC v. CP III Rincon Towers, Inc.* (2019) 43 Cal.App.5th 988, 993.) And, when an action involves both legal and equitable issues, the equitable issues, ordinarily, are tried first, for this may obviate the necessity for a subsequent trial of legal issues. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1238.)

Here, plaintiff’s operative complaint alleges both equitable and legal causes of action. The court will grant plaintiff’s request for a bifurcated bench trial on the partition claim.

2.2. Request for Expedited Setting of Trial on the Bifurcated issues

In support of his request for expedited setting of trial, plaintiff points out that the secured loan is in default. As of October 14, 2026, plaintiff has received no notice of trustee’s sale (Bateman Decl., filed Oct. 15, 2026, ¶ 7); however, plaintiff claims “[a] referee sale is more likely to preserve equity than a foreclosure sale if the necessary ownership determination, appointment, listing, marketing, escrow, and confirmation steps can proceed promptly. (Borg Decl., Exhs. B–C; Civ. Code, § 2924, subd. (a)(4).)” (Mtn. at 4:11–14.)

Defendants argue that trial is premature on the partition action because the pleadings are not yet at issue; defendants’ motion to strike the FAC is currently set for

January 8, 2027. (Opp. at 4:9–20.) Further, defendants argue, plaintiff’s “[m]otion asks this Court to find, on an expedited basis, that ‘Canites owns no interest in the Property.’ But the FAC, which is the operative pleading ... does not allege that.” (Opp. at 4:25–27 (quoting Mtn. at 3:19–22).)

Although plaintiff does not cite it in his briefing, the court notes that Code of Civil Procedure section 36, subdivision (e), provides: “Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.” (Code Civ. Proc., § 36, subd. (e).)

The court finds that plaintiff has not met his burden of demonstrating he is entitled to trial setting preference on the bifurcated issue of partition. A motion to strike plaintiff’s FAC is currently set for January 8, 2027. And, as plaintiff acknowledges, there is no trustee’s sale pending. Therefore, the court denies the portion of plaintiff’s motion requesting expedited trial setting without prejudice.

TENTATIVE RULING # 7: PLAINTIFF’S MOTION IS GRANTED IN PART AND DENIED IN PART WITHOUT PREJUDICE. THE COURT GRANTS BIFURCATION ON THE PARTITION CLAIM. THE COURT DENIES PLAINTIFF’S REQUEST FOR EXPEDITED SETTING OF TRIAL ON THE BIFURCATED ISSUE WITHOUT PREJUDICE.

BECAUSE NEITHER PLAINTIFF’S NOTICE OF MOTION OR NOTICE OF HEARING CITED LOCAL COURT RULE 7.10.05 CONCERNING THE COURT’S TENTATIVE RULING SYSTEM, AS REQUIRED, THE COURT WILL NOT REQUIRE A NOTICE OF INTENT TO APPEAR FOR ORAL ARGUMENT.