

1. C.P. v. DOE 1, ET AL., 22CV1120**Motion for Summary Judgment**

On July 16, 2026, pursuant to Code of Civil Procedure section 437c, defendant County of El Dorado (“defendant” or the “County”) filed the instant motion for summary judgment as to the first cause of action for negligence (the sole cause of action asserted against the County) in plaintiff C.P.’s (“plaintiff”) second amended complaint (“SAC”). Alternatively, the County moves for summary adjudication, as the first cause of action involves multiple legal theories. (See Code Civ. Proc., § 437c, subd. (f)(1).)

On September 18, 2026, plaintiff filed a timely opposition. On September 28, 2026, defendant filed a timely reply.

1. Plaintiff’s Continuance Request

Pursuant to Code of Civil Procedure section 437c, subdivision (h),¹ plaintiff’s opposition brief asks the court to deny the motion for summary judgment or grant a continuance so that plaintiff may depose Mitch De La Riva, Paul Fazio, and Robert Stovall, each of whom were employed by Tahoe Turning Point (“TTP”), the foster home agency involved in this case. Defendant opposes plaintiff’s request on the grounds that he has not met the requirements of section 437c, subdivision (h).

“If it appears from the affidavits submitted in opposition to a motion for summary judgment ... that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court *shall* deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just.” (§ 437c, subd. (h), emphasis added.) But a continuance is not mandatory “when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing under section 437c, subdivision (h).” (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254 (*Cooksey*).) “Even absent a sufficient declaration, ‘the court must

¹ Further undesignated statutory references are to the Code of Civil Procedure.

determine whether the party requesting the continuance has nonetheless established good cause therefor.’ ” (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 643 (*Chavez*).) That determination is within the court’s discretion.² (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170–172; see also *Scott v. CIBA Vision Corp.* (1995) 38 Cal.App.4th 307, 313–314, 326.)

“[A]n opposing party’s declaration [under section 437c, subdivision (h)] must show (1) the facts to be obtained are essential to opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why additional time is needed to obtain these facts.” (*Chavez, supra*, 238 Cal.App.4th at p. 643.) “[L]ack of diligence may be a ground for denying a request for a continuance of a summary judgment motion hearing. Although the statute does not expressly mention diligence, it does require a party seeking a continuance to declare why ‘facts essential to justify opposition ... cannot, for reasons stated, then be presented’ ([former] § 437c, subd. (h), italics added), and courts have long required such declarations to be made in good faith.” (*Cooksey, supra*, 123 Cal.App.4th at p. 257.) “A good faith showing that further discovery is needed to oppose summary judgment requires some justification for why such discovery could not have been completed sooner.” (*Ibid.*; accord, *Braganza v. Albertson’s LLC* (2021) 67 Cal.App.5th 144, 156.)

In support of the instant request, plaintiff’s attorney declares: “Plaintiff has noticed the depositions of Mitch De La Riva, Paul Fazio, and Robert Stovall, each a percipient witness to the TTP’s knowledge, disclosure, and response practices, all scheduled after Plaintiff’s deadline to submit this opposition. Plaintiff has also filed a Motion for Leave

² In deciding whether to continue a summary judgment motion hearing to permit additional discovery, the trial court considers various factors including: “(1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reasons; and (6) the question whether the evidence sought is truly essential to the motion.” (*Chavez, supra*, 238 Cal.App.4th at p. 644.)

to File a Third Amended Complaint, currently set for hearing after this motion. Finally, TTP remains in default, but its insurer has been in communication with Plaintiff's counsel and is anticipated to seek to file an Answer in Intervention on behalf of its now-defunct insurer, which would reopen a discovery channel directly relevant to the notice question this motion presents [i.e., whether defendant had notice of actual indicators of potential abuse]." (Jones Decl., ¶ 6.)

Defendant argues that plaintiff has not established diligence where defendant disclosed the names of the intended deponents in its December 2024 written discovery responses. Even if, however, plaintiff is not entitled to a mandatory continuance under Section 437c, subdivision (h), the court still finds good cause to exercise its discretion to grant the requested continuance. Trial in this case is currently set for September 2027, nearly a year from now. Plaintiff has not previously requested a continuance for the same reason. And importantly, the facts that plaintiff seeks to obtain through the proposed discovery appears to be essential to oppose the instant motion.

The County has a duty to investigate sexual abuse of minors placed in foster care when the County has actual indicators or notice of potential abuse. (*Doe v. Los Angeles County Dept. of Children & Family Services* (2019) 37 Cal.App.5th 675, 682–683; see also *Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 902 [county had no prior knowledge of social worker's propensity to sexually assault children].) Here, depending on the deponents' testimony, plaintiff may be able to produce evidence that the County had notice of actual indicators of abuse or notice of potential abuse, which would trigger the duty to investigate.

Plaintiff has not indicated when the noticed depositions are scheduled to take place. In the absence of such information, the court will grant a roughly 90-day continuance of the summary judgment motion for plaintiff to complete the depositions. Such continuance will also allow the court to make a determination on plaintiff's pending motion for leave to amend the SAC.

TENTATIVE RULING # 1: THE COURT GRANTS PLAINTIFF'S REQUEST TO CONTINUE THE HEARING ON DEFENDANT COUNTY OF EL DORADO'S MOTION FOR SUMMARY JUDGMENT TO ALLOW PLAINTIFF TO COMPLETE FURTHER DISCOVERY. THE COURT HEREBY CONTINUES THE INSTANT HEARING TO 1:30 P.M., FRIDAY, JANUARY 15, 2027, IN DEPARTMENT FOUR.

2. DISCOVER BANK v. JULIE CLASPILL, 23CV2092**OSC Re: Dismissal after Notice of Settlement**

On August 19, 2026, the parties reached a settlement during a Mandatory Settlement Conference. An Order to Show Cause (“OSC”) regarding dismissal was originally set for September 18, 2026. There were no appearances at the September 18 hearing even though appearances were required. The court, on its own motion, continued the hearing and ordered plaintiff’s counsel to appear unless a request for dismissal is filed prior to the continued hearing date.

To date, there is still no request for dismissal in the court’s file.

TENTATIVE RULING # 2: PLAINTIFF’S ATTORNEY’S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 9, 2026, IN DEPARTMENT FOUR.

3. ROBERTS, ET AL. v. McINTYRE, ET AL., 25CV1786**(A) McIntyre Defendants' Demurrer to Second Amended Complaint****(B) McIntyre Defendants' Motion to Strike Portions of Second Amended Complaint****Demurrer**

On August 7, 2026, pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendants Robert McIntyre and Bettina McIntyre (collectively, "defendants") filed a demurrer to the third cause of action for breach of governing documents in plaintiffs James Roberts's and Susan Roberts's (collectively, "plaintiffs")³ second amended complaint ("SAC"). Defense counsel declares he met and conferred with plaintiffs' counsel via telephone on July 31, 2026, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Hallissy Decl., ¶ 3.)

On September 23, 2026, plaintiffs filed a timely opposition. On October 2, 2026, defendants filed a timely reply.

1. 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 Both plaintiffs bring this action in their capacity as trustees of The Roberts Living Trust dated August 8, 1996, and restated November 18, 2008. (SAC at 1:20–24.)

2. Discussion

The third cause of action in the SAC for breach of governing documents is brought under Civil Code section 5975 against all defendants. With respect to the demurring defendants, the SAC alleges “[t]he McIntyres breached the Declaration, and the equitable servitudes it imposes, in at least the following respects: (a) by constructing and maintaining a structure that fails to comply with the applicable setback lines, in violation of the minimum construction standards required by Article VII, Sections 1, 3, and 10 of the Declaration; and (b) by constructing and maintaining a fully flat roof and a roof deck covering substantially more than twenty-five percent (25%) of the roof area, in violation of Section 6.02, with which the Declaration required them to comply.” (SAC at 11:5–11.)

When it comes to enforcement rights between individual homeowners in a common interest development, Civil Code section 5975 draws a critical distinction between the declaration of covenants, conditions, and restrictions (“CC&Rs”) and other governing documents. Civil Code section 5975, subdivision (a) expressly grants homeowner-to-homeowner enforcement rights, but only as to restrictions contained in the declaration of CC&Rs. Civil Code section 5975, subdivision (b) addresses governing documents other than the Declaration of CC&Rs and provides that a governing document other than the Declaration of CC&Rs may be enforced (1) by the association against an owner of a separate interest; or (2) by an owner of a separate interest against the association. Critically, subdivision (b) does not authorize one owner of a separate interest to enforce a non-declaration governing document against another owner of a separate interest.

The Davis-Stirling Common Interest Development Act, under which Civil Code section 5975 operates, defines “governing documents” as “the declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.” (Civ. Code, § 4150.) The “declaration” is the document that “contain[s]

[the] legal description of the common interest development”; states whether “the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof”; and “set[s] forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.” (Civ. Code, §§ 4135, 4250, subd. (a).)

The court addresses the two separate theories of liability against defendants below.^{4,5} Because neither theory states a valid claim for relief, the court will sustain defendants’ demurrer.

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⁴ Defendant also argues that the following “catch-all” allegations are uncertain and unactionable: “The McIntyres are further liable for any additional violations of the governing documents governing setbacks, height, bulkheads, drainage, and related design standards embodied and enforceable through the Architectural Control process, the full extent of which will be established through discovery.” (SAC at 11:11–15.) The court agrees with defendants.

⁵ Plaintiffs’ opposition brief sets forth a new legal theory: that defendants allegedly violated Section 16 of Article VIII of the Declaration. Article VIII of the Declaration is entitled, “Use of Properties and Restrictions.” Section 16 of Article VIII is entitled, “Compliance With Local Laws and Activities Affecting Insurance” and reads in full: “Subject to rights of reasonable contest, nothing shall be done or kept on any Lot or within the Common Areas which will increase the rate of insurance relating thereto (or insurance maintained by the Association on Townhouse structures) without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or the Common Areas which would result in the cancellation of insurance on any Residence or any part of the Common Areas or which would be in violation of any applicable statute, ordinance, law or administrative ruling or regulation.” (SAC, Ex. B, Art. VIII, Sec. 16.) Plaintiffs’ opposition argues that “[t]he SAC alleges a 25 foot structure on [defendants’] lot where the TRPA Code ... permits 24 feet, built on a plan set that misstated the limit, so that ‘[a]s built, the structure is not compliant with TRPA Code Chapter 37.’ ” (Opp. at 9:12–15.) Defendants point out that Article VIII, Section 16 of the Declaration is not cited anywhere in the SAC. (Dem. at 11:17–18.) The court finds that, as currently pleaded, the SAC cannot reasonably be read to assert a claim for breach of governing documents based upon the alleged violation of Section 16 of Article VIII of the Declaration. Therefore, the court does not reach such legal theory in this tentative ruling.

2.1. Alleged Breach of the Setback Requirement

Section 10(b) of Article VII of the Declaration provides in pertinent part: “Any structure placed on a Lot shall comply with all setback lines shown on any applicable Subdivision Map or imposed by City or County zoning regulations. No improvement shall be erected or permitted nearer than 15 feet from the bulkhead or high water line as shown on any Subdivision Map.” (SAC, Ex. B at Art. VII, Sec. 10(b).)

Because the setback requirement is included in the Declaration, it is generally enforceable by one homeowner of a common interest development against another. (Civ. Code, § 5975, subd. (a).)

As alleged, however, defendants argue that the SAC fails to state a claim for relief based on the alleged breach of the setback requirement. Defendants point out that the SAC does not allege the source of the asserted setback (i.e., a Subdivision Map, a City or County zoning regulation, or the 15-foot limitation from the bulkhead or highwater line), the required setback distance, or facts showing where the improvement lies relative to any such setback line. (Dem. at 9:18–21.) The court agrees with defendants and finds that the SAC fails to allege sufficient facts of a breach of the setback requirement in the Declaration.

Because plaintiffs have not previously been afforded an opportunity to amend the claim with respect to the setback theory, the court will sustain the demurrer on this theory with leave to amend.

2.2. Alleged Breach of the Flat Roof and Roof Deck Covering Limitations

The flat roof and roof deck covering limitations are set forth in Section 6.02 of the Architectural Control Rules, which provides: “No more than 25% of the roof can be used for a deck. No flat roofs or pitch less than 2/12 is permitted.” (SAC, Ex. A at Sec. 6.02.)

The SAC characterizes Section 6.02 of the Architectural Control Rules as “a rule promulgated pursuant to the Declaration’s Article VII architectural control scheme.” (SAC at 10:24–28.) The SAC further alleges that: (1) “[t]he obligation to comply with

Section 6.02 is ... an obligation imposed by, and enforceable under, the Declaration” (SAC at 11:3–4); and (2) “[t]he obligations the Plaintiffs seek to enforce against the McIntyres are rooted in the recorded Declaration itself” (SAC at 10:10–11).

Although the Architectural Control Rules are governing documents (Civ. Code, § 4150), they exist outside of the Declaration (Civ. Code, § 4135). Therefore, homeowners in the common interest development do not have the right under Civil Code section 5975 to enforce the Architectural Control Rules against another homeowner in the common interest development. That is because rules or regulations outside the recorded Declaration (i.e., the Architectural Control Rules) lack the same binding effect on homeowners that the recorded CC&Rs in the Declaration have. (See *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 379 [explaining that “the inclusion of covenants and restrictions in the declaration recorded with the county recorded provides sufficient notice to permit the enforcement of such recorded covenants and restrictions as equitable servitudes” by one homeowner in a common interest development against another].)

Because plaintiffs have had a previous opportunity to amend their complaint with respect to the alleged breach of the Architectural Control Rules, and there does not appear to be any reasonable possibility that further amendment will cure the defect, the court sustains the demurrer to this claim under the roofing theory without further leave to amend.

Motion to Strike

On August 7, 2026, pursuant to Code of Civil Procedure sections 435, 436, and 437, defendants filed their motion to strike the following portions of the SAC: (1) “and TKPOA’s Architectural Control Rules,” as alleged on Page 8, line 2; and (2) “The McIntyres are further liable for any additional violations of the governing documents governing setbacks, height, bulkheads, drainage, and related design standards

embodied in and enforceable through the Architectural Control process, the full extent of which will be established through discovery,” as alleged on Page 11, lines 10 through 15.⁶ Defense counsel declares he met and conferred with plaintiffs’ counsel via telephone on July 31, 2026, in compliance with Code of Civil Procedure section 435.5, subdivision (a). (Hallissy Decl., ¶ 3.)

On September 23, 2026, plaintiffs filed a timely opposition, indicating they do not oppose either of two requests to strike identified above. Good cause appearing, the court grants the motion to strike these two portions of the SAC.

TENTATIVE RULING # 3:

DEMURRER: THE DEMURRER TO THE THIRD CAUSE OF ACTION IS SUSTAINED. WITH RESPECT TO THE THEORY ALLEGING BREACH OF THE SETBACK REQUIREMENT, THE COURT SUSTAINS THE DEMURRER WITH LEAVE TO AMEND; WITH RESPECT TO THE THEORY ALLEGING BREACH OF THE ARCHITECTURAL CONTROL RULES, THE COURT SUSTAINS THE DEMURRER WITHOUT FURTHER LEAVE TO AMEND.

MOTION TO STRIKE: THE COURT GRANTS THE MOTION TO STRIKE THE FOLLOWING PORTIONS OF THE SECOND AMENDED COMPLAINT: (1) “AND TKPOA’S ARCHITECTURAL CONTROL RULES,” AS ALLEGED ON PAGE 8, LINE 2; AND (2) “THE MCINTYRES ARE FURTHER LIABLE FOR ANY ADDITIONAL VIOLATIONS OF THE

⁶ In the event that the court overrules the demurrer, defendants’ motion to strike also includes an alternative request to strike a third portion of the SAC: “and (b) by constructing and maintaining a fully flat roof and a roof deck covering substantially more than twenty-five percent (25%) of the roof area, in violation of Section 6.02, with which the Declaration required them to comply.” However, as discussed under the Demurrer section in this tentative ruling, the court is sustaining defendants’ demurrer to the breach of governing documents claim with respect to the alleged breach of the roofing limitations in the Architectural Control Rules (without leave to further amend). Therefore, the court does not reach this particular request to strike. Having sustained the demurrer on this theory without leave to amend, however, the court expects plaintiffs to remove the challenged allegation from any future amended pleading filed in this case.

GOVERNING DOCUMENTS GOVERNING SETBACKS, HEIGHT, BULKHEADS, DRAINAGE, AND RELATED DESIGN STANDARDS EMBODIED IN AND ENFORCEABLE THROUGH THE ARCHITECTURAL CONTROL PROCESS, THE FULL EXTENT OF WHICH WILL BE ESTABLISHED THROUGH DISCOVERY,” AS ALLEGED ON PAGE 11, LINES 10 THROUGH 15. HAVING SUSTAINED THE DEMURRER, THE COURT DOES NOT REACH DEFENDANTS’ ALTERNATIVE REQUEST TO STRIKE THE FOLLOWING PORTION OF THE SECOND AMENDED COMPLAINT: “AND (B) BY CONSTRUCTING AND MAINTAINING A FULLY FLAT ROOF AND A ROOF DECK COVERING SUBSTANTIALLY MORE THAN TWENTY-FIVE PERCENT 25%) OF THE ROOF AREA, IN VIOLATION OF SECTION 6.02, WITH WHICH THE DECLARATION REQUIRED THEM TO COMPLY.” HOWEVER, AS EXPLAINED IN FOOTNOTE 6, THE COURT EXPECTS PLAINTIFFS TO REMOVE SAID PORTION FROM ANY FUTURE AMENDED PLEADING.

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. LYNN McKENDRY v. DOUG McKENDRY, 25CV1609**Default Judgment Prove-up Hearing**

This is a partition action between two former spouses concerning the real property located at 2209 Catalina Drive in South Lake Tahoe, California (the “South Lake Tahoe Property”).⁷ Default was entered against defendant Doug McKendry (“defendant”) on August 31, 2026.

Pending before the court is plaintiff Lynn McKendry’s (“plaintiff”) request for default judgment against defendant (filed Aug. 31, 2026) in the total amount of \$196,093.00, representing \$166,093.00 in alleged damages and \$30,000 in alleged attorney fees. Plaintiff’s request for default judgment also includes a request that defendant be “removed from GRANT DEED.” (See, Request filed Aug. 31, 2026, ¶ 7(f).)

The court is required to render default judgment only “for that relief ... as appears by the evidence to be just.” (Code Civ. Proc., § 585, subd. (b).) “The only evidentiary facts that have a place at a prove-up hearing are those concerning the damages alleged in the complaint. [Citations.]” (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 899–900.) Where a cause of action is stated in the complaint, plaintiff merely needs to introduce evidence establishing a prima facie case for damages. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) “ ‘Prima facie evidence is that which will support a

⁷ Plaintiff’s complaint alleges she and defendant purchased the South Lake Tahoe Property in 2007. The parties divorced in October 2020 but remained co-owners of the South Lake Tahoe Property as joint tenants. As alleged in Attachment C to plaintiff’s complaint, the parties entered into a marital settlement agreement in their Nevada divorce proceeding (Washoe County Super. Ct., Case No. 20-10DC-1103), wherein the parties agreed that, as of April 23, 2024, and pending the sale of the South Lake Tahoe property, defendant agreed to pay all costs associated with the South Lake Tahoe Property, and plaintiff agreed to pay all costs associated with the parties’ other real property located in Palm Desert, California. Plaintiff’s complaint does not attach a complete copy of the marital settlement agreement, or a complete copy of any court order issued in the divorce proceeding; there are only partial copies of certain court filings attached to plaintiff’s complaint.

ruling in favor of its proponent if no controverting evidence is presented.’ ” (*People v. Zamora* (2022) 73 Cal.App.5th 1084, 1091.)

Plaintiff has not submitted prima facie evidence to this court that she is entitled to the requested relief. Additionally, a portion of one of the Nevada court orders states, “The parties reserve the Court’s jurisdiction as needed to affect the terms of this agreement, the sale of the SLT property and the division of the PD property.” (Compl., Ex. E at ¶ 9.) Based on the limited information provided to the court, it also appears that, based on the terms of the marital settlement agreement, the requested relief may need to be sought from the Nevada court.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 9, 2026, IN DEPARTMENT FOUR.