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#1. NAME CHANGES OF EMMA & MADISON C. 22CV1559

Where a petition for name change is filed on behalf of a person who is under the age of 18 and the petition is signed by only one parent, "…the petition shall specify the address, if known, of the other parent if living…." Cal. Civ. Pro. § 1276(c). The petition provides only the name and address of the signing parent. Neither the name nor the address of the non-signing parent is included. The guardian is ordered to appear to address the missing information.

TENTATIVE RULING #1: THE GUARDIAN IS ORDERED TO APPEAR TO ADDRESS THE MISSING INFORMATION. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

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#2. CONFIDENTIAL NAME CHANGE -736746 22CV1599

TENTATIVE RULING #2: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

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#3. JULIEANN CHONG V. EDYTHE PAULINE BROWN 22CV0406

Plaintiff has filed a Petition for Approval of Compromise of Claim requesting the court approve the personal injury settlement reached on behalf of the minor. Unless the court finds good cause otherwise, appearances by the petitioner and the minor are always required for an approval of a minor's compromise pursuant to California Rule of Court, Rule 7.952(a). The parties are ordered to appear. If the parties believe there is good cause for the minor not to appear, the court may consider this upon submission of a declaration at the hearing which states the reasons for the minor's inability to attend the hearing.

TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR. IF THE MINOR CANNOT ATTEND, THE PARTIES ARE ORDERED TO BRING A DECLARATION PROVIDING GOOD CAUSE FOR THE MINOR'S ABSENCE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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#4. IN RE MAYA TAN 22CV1314

Petitioner has filed a Petition for Approval of Compromise of Claim requesting the court approve the personal injury settlement reached on behalf of the minor. Unless the court finds good cause otherwise, appearances by the petitioner and the minor are always required for an approval of a minor's compromise pursuant to California Rule of Court, Rule 7.952(a). The parties are ordered to appear. If the parties believe there is good cause for the minor not to appear, the court may consider this upon submission of a declaration at the hearing which states the reasons for the minor's inability to attend the hearing.

TENTATIVE RULING #4: THE PARTIES ARE ORDERED TO APPEAR. IF THE MINOR CANNOT ATTEND, THE PARTIES ARE ORDERED TO BRING A DECLARATION PROVIDING GOOD CAUSE FOR THE MINOR'S ABSENCE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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#5. JASON MATTHEW HOUNTALAS v. MARIA ELENA RAMOS 22CV0573

Defendant filed a Notice of Motion and Motion to Set Aside Default Taken Against Defendant Maria Ramos, Declaration of Maria Ramos in Support of Motion to Set Aside Default Taken Against Defendant Maria Ramos, and a Declaration of Adam Weiner in Support of Motion to Set Aside Default Taken Against Defendant Maria Ramos. All documents were filed on October 31, 2022. There is no Proof of Service for these documents; however, Plaintiff has filed opposing papers and it does not appear that Plaintiff has objected on the basis of service, so the court finds good cause to rule on the merits of the matter.

Plaintiff Jason Matthew Hountalas' Memorandum of Points and Authorities in Support of His Opposition to Defendant Maria Elena Ramos' Motion to Set Aside Default was filed and served on December 5, 2022. Concurrently therewith, Plaintiff filed and served a Declaration of Anthony P.J. Valenti in Support of Plaintiff Jason Matthew Hountalas' Opposition to Defendant Maria Elena Ramos' Motion to Set Aside Entry of Default.

The complaint was filed on April 28, 2022, alleging causes of action for assault, battery, and intentional and negligent infliction of emotional distress. It was served on May 22, 2022. Defendant failed to answer, and her default was taken on July 6, 2022. Defendant seeks to have the default set aside on the basis that her failure to respond to the complaint was excusable error. According to Defendant, when she was served with the civil complaint, she was of the belief that her criminal attorney was aware of the civil case and would respond on her behalf. The criminal matter stemmed from the same circumstances that gave rise to the civil case. Defendant argues that even if the default is not set aside, Plaintiff cannot recover any monetary damages due to his failure to serve a Statement of Damages. Without any monetary damages, Defendant argues, costs and fees are also not recoverable.

Plaintiff opposes the motion and asks the court to award him $2,300 in attorney's fees and costs incurred in connection with the default proceedings given that Plaintiff offered to stipulate to set aside the default prior to the filing of the motion. At that time, Plaintiff offered to set aside the default in exchange for Defendant reimbursing him $696 for the costs associated with preparing and taking the default. Plaintiff concedes that the motion was timely

filed, and the court has broad discretion to set aside the default. Thus, the only real issue before the court is whether or not Plaintiff should be awarded costs and fees as a result of having to file for default and oppose the present motion. Plaintiff argues that he has, in fact, been prejudiced by Defendant's failure to timely respond because it caused him to incur costs and fees he otherwise would not have incurred if she had timely filed a response. He argues that he has been further prejudiced by incurring additional fees associated with opposing the present motion.

It is apparent from the filings of the parties that setting aside the default is proper and warranted in these circumstances. In fact, it is unopposed. That said, Defendant's Motion to Set Aside Default is granted. Defendant is to file her answer by no later than December 23, 2022.

"A court may relieve a party from a judgment taken through mistake, 'upon any terms as may be just.' [citation]. Such terms frequently condition relief obtained under section 473 on the payment of an adversary's fees and costs." Vanderkous v. Conley, 188 Cal. App. 4th 111 (2010) *citing* Rogalski v. Nabers Cadillac, 11 Cal. App. 4th 816 (1992).

Here, the court finds an award of attorney's fees and costs to be the just resolution. If it were not for Defendant's inaction, Plaintiff would not have incurred the costs and fees associated with taking the default. Further, Defendant opted to file the present motion in lieu of stipulating to the set aside, thereby causing Plaintiff to incur additional costs and fees.

According to the Declaration of Anthony P.J. Valentini, Plaintiff has incurred $695 in association with the preparation and filing of the default, and $1,500 in preparing and filing the opposition to the motion. The court feels it is warranted to award only those costs and fees that have actually been incurred as of the time of this writing. However, awarding the entire amount of fees associated with opposing the motion seems unjust as Plaintiff was not opposing the set aside of the default itself so he had the option to not incur any additional fees. A more fitting result would be to award Plaintiff the entirety of the costs associated with the taking of the default and the preparation of the default judgment, as well as only a portion of those fees incurred in opposing the motion. Therefore, Plaintiff is awarded sanctions in the amount of $1,445 ($695 associated with the default judgment and $750 which is one-half of the fees incurred to oppose the motion) due by no later than January 16, 2023.

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TENTATIVE RULING #5: DEFENDANT'S MOTION TO SET ASIDE DEFAULT IS GRANTED. DEFENDANT IS TO FILE HER ANSWER BY NO LATER THAN DECEMBER 23, 2022. PLAINTIFF IS AWARDED SANCTIONS IN THE AMOUNT OF $1,445 DUE BY NO LATER THAN JANUARY 16, 2023. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

#6. AMERICREDIT FINANCIAL SERVICES, INC. v. RAYDEN CHARNOCK ET. AL. 22CV1513

On October 18, 2022, Plaintiff filed a Complaint for Possession of Personal Property; Breach of Contract and Damages; Common Counts and an Application for Writ of Possession related to the purchase 2019 Chevrolet Silverado 1500. Plaintiff declares the following in support of the application: Plaintiff and Defendants entered into a conditional purchase agreement for the purchase and financing of the motor vehicle; Defendants pledged as security the motor vehicle; Defendants are in possession of the motor vehicle and, despite their default on the agreement, have refused to surrender it. According to Plaintiff, the purchase agreement was entered into on February 7, 2020, and Defendants defaulted under the agreement as of March 23, 2020. Plaintiff argues that Defendants likely have no equity in the vehicle and Plaintiff should not be required to post an undertaking. At most, there may be an interest of $1,047.33, assuming the vehicle is in good condition. If anything, Plaintiff argues, Defendants should have to post an undertaking of at least $27,477.67, which is the amount of the balance owing on the contract. Plaintiff is of the belief that the vehicle is located at Defendants' address in Placerville.

Plaintiff is required to serve upon Defendants copies of the summons and complaint, a notice of the application and hearing date, and a copy of the application for writ of possession and the affidavits in support of the application. Cal. Civ. Pro. § 512.030. There is no Proof of Service in the court's file indicating that Defendants were properly served with the foregoing and there is no opposition to the application.

The matter is continued to February 10, 2023 at 8:30 a.m. in Department 9. Plaintiff is ordered to serve Defendants forthwith. If Defendants have not been timely served prior to the next hearing date the court is inclined to drop the matter from calendar.

TENTATIVE RULING #6: THE MATTER IS CONTINUED TO FEBRUARY 10, 2023 AT 8:30 A.M. IN DEPARTMENT 9. PLAINTIFF IS ORDERED TO SERVE DEFENDANTS FORTHWITH. IF DEFENDANTS HAVE NOT BEEN TIMELY SERVED PRIOR TO THE NEXT HEARING DATE THE COURT MAY BE INCLINED TO DROP THE MATTER FROM CALENDAR. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY

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4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

7. JOSEF DULLER, ET. AL. V. GABRIELE MCINNIS, ET. AL. PC20200201

On October 25, 2022, Defendant Gabriel McInnis filed Defendant's Notice of Motion and Motion for Judgment on the Pleadings, Defendant's Memorandum in Support of Motion for Judgment on the Pleadings, Declaration of Jarom B. Phipps in Support of Motion for Judgment on the Pleadings, and a Proposed Order on Motion for Judgment on the Pleadings. All documents were served via email on October 25th and then again via U.S. Mail on October 26th.

Plaintiffs filed and served their Memorandum of Points and Authorities in Opposition to Defendant's Motion for Judgment on the Pleadings on December 5th. Defendant filed and served its Reply in Support of Motion for Judgment on the Pleadings on December 9th.

Standard of Review

Where the moving party is a defendant, a motion for judgment on the pleadings may only be made on one of the following grounds: "(i) The court has no jurisdiction of the subject cause of action alleged in the complaint" or "(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant…" Cal. Civ. Pro. § 438(c)(1)(B). Grounds for such a motion must be on the face of the pleading or from matters which may be judicially noticed. Cal. Civ. Pro. § 438(d).

"A motion for judgment on the pleadings performs the same function as a general demurrer...." Cloud v. Northrop Grumman Corp,. 67 Cal.App.4th 995, 999 (1998). Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." Lance Camper Manufacturing Corp. v. Republic Indemnity Co., 44 Cal.App.4th 194, 198 (1996). Notwithstanding the foregoing, "contentions, deductions, or conclusions of fact or law...." are not to be taken as true. People ex rel. Harris v. Pac Anchor Transp., Inc., (2014) 59 Cal.4th 772, 777. Furter, "[p]resentation of extrinsic evidence is…not proper on a motion for judgment on the pleadings." Sykora v. State Department of State Hospitals 225 Cal.App.4th 1530, 1534 (2014) *citing Cloud,* at p. 999.

Cause of Action Nos. 1 and 2

Defendant argues causes of action numbers 1 and 2 fail to state facts sufficient to constitute causes of action for financial elder abuse. Causes of actions 1 and 2 allege Defendant unduly influenced Decedent to name Defendant as a co-owner of Decedent's bank account, and name Defendant as the beneficiary to Decedent's AIG annuity policy. Defendant argues there are no factual allegations stating that Defendant ever took any of the money or misappropriated any money from the bank account. Likewise, Defendant states there are no allegations that Defendant took any policy proceeds from the AIG annuity policy nor altered the Decedent's rights to the account. Both causes of action, according to Defendant, assert only that Plaintiffs were harmed because they do not inherit these assets. There are no allegations of harm to the Decedent. Specifically, Defendant argues Plaintiff has made no showing that there was a taking of the Decedents property and thus they cannot establish a prima facie case of financial elder abuse.

Plaintiffs dispute Defendant's summary of the elements of a cause of action for financial elder abuse and point to the sources and authority of CACI No. 3100, which stresses the expansive reach of Welfare and Institutions Code Section 15610.30. Plaintiff argues that the right to make a testamentary bequest of property is incident to property ownership and an act depriving the elder of the ability to exercise that right, constitutes a taking under the broad scope of Section 15610.30. Further, the act of having deprived Decedent the ability bequest his property as he so pleased was, itself, harm to the Decedent.

In response, Defendant argues that the inclusion of "donative transfer or testamentary bequest" in Section 15610.30 was meant to permit recovery where the property taken was not owned or controlled by the elder. This way people could not get around an elder abuse claim by arguing that the property taken was owned by a trust instead of the elder. Defendant further argues that the Decedent's mental incapacity does not create a deprivation of property rights because there was no conservatorship put in place and testamentary capacity is such a low bar that the bank account and beneficiary actions could have been undone at any time despite the Decedent's mental incapacity.

The issue at hand is whether or not the facts contained in the complaint, taken as true, would be sufficient to constitute a "taking" for purposes of a financial elder abuse claim. Welfare and Institutions Code Section 15610.30 defines financial elder abuse as "taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use, with intent to defraud or by way of undue influence." Wel. & Inst. Code §15610.30(a)(1)-(a)(3). The code goes on to state that a taking occurs "…when and elder or dependent adult is deprived of *any property right*." *Id*. at subsection (c)(emphasis added). It is irrelevant that the defendant in a cause of action for financial elder abuse does not take or possess any of the elder's real or personal property, because a taking can occur simply where the elder was supplanted of his/her ability to dispose of his/her estate as he/she so chooses. *See* White v. Wear, 76 Cal. App. 5th 24 (2022).

Section 15610.30 was written broadly to ensure the act affords as much protection as possible. Thus, the statute is to be liberally construed on behalf of the elders and the court is to resolve any reasonable disputes in favor of protecting the persons the statute is designed to protect. Mahan v. Charles W. Chan Ins. Agency, Inc., 14 Cal. App. 5th 841 (2017) *citing* Cal. Assn. of Health Facilities v. Dept. of Health Services, 16 Cal. 4th 284, 295 (1997) (a remedial statute is to be "liberally construed on behalf of the class of persons it is designed to protect.").

Both parties rely heavily on the *Mahan* case. While the matter does not appear to be exactly on point, the court in *Mahan* did concede that "[d]ue to the ticking of the actuarial clock and their declining health, these elders can never again qualify for life insurance of the same value they secured in the mid-1990s. Once they suffered a "depriv[ation]," the value of that asset cannot be restored any more than the clock can be turned back." Mahan, *Supra* at 864. In line with Mahan, where the simple passage of time sufficiently deprived Plaintiffs of their ability to be returned to their initial position, here, the bequest of property in light of the Decedent's deteriorating mental capacity may have deprived him of the right to dispose of the property as he pleased. This would be a taking under Section 15610.30. In fact, such was the case in *White* where the simple procurement of an amendment which "purports to supplant [the elder's] intent expressed in his estate plan at all times while he had capacity" was found to constitute a

taking. White, 76 Cal. App. 5th at 41. Defendant distinguishes the *White* case on the basis that the remedy sought was a restraining order. The court does not find this argument compelling. The *White* court analyzed the scope and applicability of Section 15610.30. Regardless of the remedy sought, statutory analysis remains the same and therefore can be applied here.

Defendant further argues that the Decedent's capacity was not so diminished that he would not have been able to remove Defendant as the joint account holder or the beneficiary if he had wanted to. Plaintiffs argue that his capacity had diminished to such an extent that the gifts became effectively non-reversable. With the court's analysis is limited to the facts asserted in the complaint, taken as true, it is apparent that the Decedent suffered from incapacity, illness, disability, cognitive disfunction and emotional distress.

Given the factual basis provided by the complaint it could certainly be found that the Decedent lacked sufficient capacity to understand the ramifications of his actions and to undo them if he chose to. Because this would have effectively deprived him of the right to further bequest these assets, it can be found that a taking did occur. Further, the court notes that in arguing the extent of the decedent's capacity, Defendant claims there was no conservatorship in place. This is not included within the confines of the pleading. The mere fact that Defendant is relying on information garnered from outside the pleading indicates that additional facts are needed to properly adjudicate the claim, and the matter should be reached on the merits. Accordingly, Defendant's Motion for Judgment on the Pleadings on causes of action 1 and 2 is denied.

Cause of Action No. 3

According to Defendant, the third cause of action asserts alleges Defendant unduly influenced the Decedent to create a will that names Defendant as heir to the majority of the estate. Defendant argues the third cause of action must be dismissed as the probate court has exclusive jurisdiction to determine the validity of a will and specified procedures must be followed to do so. Cal. Prob. Code §8004(b) & 8252. The third cause of action, as stated by Defendant, essentially seeks declaratory relief as to the validity of the will. Defendant points to

Civil Procedure Section 1060, which expressly excludes the validity of a will as a form of declaratory relief that may be made.

Plaintiffs argue that Defendant has misconstrued the third cause of action as it is not an action to contest the validity of the will, but instead, it is an action arguing that the procurement of the will itself constituted financial elder abuse. Plaintiffs claim their inclusion of the statement "ELDER's purported will should be rescinded, and the estate should be distributed via intestate succession," was simply included because a finding that the will was procured by elder abuse would logically lead to the rescission of the will.

Defendant responds by arguing that the procurement of a will itself cannot constitute financial elder abuse because there is no taking of an elder's property. Once again, Defendant asserts that the proper remedy to dispute a will rests with the probate court.

The Probate Code mandates, "[i]f a will is contested, the applicable procedure is that provided in Article 3 (commencing with Section 8250) of Chapter 3" of the Probate Code. Cal. Prob. Code § 8004(b). Courts have stressed the importance of abiding by the probate system noting "… '[i]f we were to permit, much less encourage, dual litigation tracks for disgruntled heirs, we would risk destabilizing the law of probate and creating uncertainty and inconsistency in its place. We would risk undermining the legislative intent inherent in creating the Probate Code as the preferable, if not exclusive, remedy for disputes over testamentary documents. [citaitons]'" Beckwith v. Dahl, 205 Cal. App. 4th 1039, 1052. Notwithstanding the foregoing, the probate court does have authority to order an action or proceeding to be heard in a separate civil action. Cal. Prob. Code § 801.

The Probate Code states, in no uncertain terms, that the validity of a will falls within the exclusive jurisdiction of the probate court. Plaintiff admittedly states that their position in including the statement regarding recission of the will was "…simply a logical result of a finding that the will was procured by financial elder abuse. There is no possibility that the legislature would have intended a document that was obtained by financial elder abuse to remain in effect after such a finding." Memo of Points and Auth. in Opp. To Defendant's Mtn. for Jdgmnt. On the Pleadings, pg. 10:6-9. The court is inclined to agree; however, this only bolsters Defendant's

position that claiming the procurement of a will was the result of financial elder abuse is effectively attacking the validity of the will itself, which this court does not have jurisdiction to do. That said, the court does not feel granting the motion for judgment on the pleadings would be appropriate in this context because the issue of financial elder abuse is properly before the court; however, a determination on the threshold issue of the validity of the will needs to be made in probate first. Accordingly, the only appropriate course of action is to bifurcate this issue from the remaining causes of action.

Defendant's Motion for Judgment on the Pleadings with regard to cause of action number 3 is denied. The court sets a hearing on whether this cause of action should be bifurcated from the remaining causes of action February 17, 2023 at 8:30 a.m. in Department 9. The parties are to file and serve on one another briefs on the issue of bifurcation by no later than January 27, 2023. Responsive briefs, if any, are to be filed and served on one another by no later than February 6, 2023. In the alternative, if the parties agree that the issue should be bifurcated, the parties are directed to submit a stipulation to the court regarding the bifurcation.

Cause of Action No. 6

The sixth cause of action is for intentional interference with an expected inheritance ("IIEI"). Defendant argues that the IIEI claim is barred because Plaintiffs have remedies available to them in probate. According to Defendant, Plaintiffs can file a will contest in probate court. If successful, they will inherit intestate, as they expected. Further, Defendant points to the fact that if Plaintiffs are successful on their claim to set aside the gift/transfer/trust/will then the assets will be reverted to the estate and there will be no damages for Plaintiffs to collect on the IIEI claim. This argument is made on the basis of issue preclusion.

Plaintiffs argue that Defendant's assertion of issue preclusion is incorrect as a claim for IIEI would account for harm suffered by Plaintiffs directly as a result of Defendant's actions, regardless of whether the assets revert back to the estate or if the elder abuse claims fail. The remedy would be directly from Defendant, not the estate. Further, Plaintiffs argue that a tort action for IIEI is only barred when a will contest is available and would provide adequate relief.

Here, Plaintiffs argue that no such adequate relief exists because there are no assets currently left in the estate.

Defendant, in her reply, argues that the IIEI tort is essentially a tort of last resort. Defendant relies on *Beckwith v. Dahl* to support her assertion that where a probate remedy is available, it must be pursued. Beckwith v. Dahl, 205 Cal. App. 4th1039 (2012). Defendant reiterates her position that the IIEI claim cannot be asserted in the alternative because of its status as a last recourse requirement, as well as issue preclusion.

The IIEI tort is relatively new in California, having only been formally recognized in *Beckwith v. Dahl* in 2012. *See* Beckwith v. Dahl, 205 Cal. App. 4th1039 (2012). The *Beckwith* court did recognize the tort with a caveat that IIEI claims should be barred "when an adequate probate remedy exists." *Beckwith,* at 1056.

Here, it is not yet known if an adequate remedy at probate exists, because it is not yet known if any of the assets will be reverted back to the estate. This alone is not sufficient to bar a claim of IIEI. Defendant's argument that this constitutes issue preclusion is incorrect. Plaintiffs are simply pleading in the alternative. Pleading in the alternative has become a well-established facet of the law for the very reason at hand; the pleading party does not have all the relevant facts at the time of filing their initial pleading. *See* Newport Harbor Ventures, LLC. V. Morris Cerullo World Evangelism, 6 Cal. App. 5th 1207 (2016).

This cause of action gives rise to the same dilemma as the first cause of action. It is unclear if IIEI can be asserted because the threshold issue needs to be decided first. Here, the threshold issue is whether the assets under causes of action 1 and 2, and any other assets that may be at issue, will be returned to the estate. Answering that question effectively answers the question of whether an action in probate would provide Plaintiffs adequate remedy and preclude Plaintiffs from bringing their IIEI claim.

Given the need for a decision on the threshold issue, the court sets a hearing on whether this cause of action should be bifurcated from the remaining causes of action February 17, 2023 at 8:30 a.m. in Department 9. The parties are directed to address this issue of bifurcation on the

same briefs regarding cause of action number 3 as outlined above or, in the alternative, to submit a stipulation to the court regarding the bifurcation.

Defendant's Motion for Judgment on the Pleadings with regard to cause of action number 6 is denied.

TENTATIVE RULING #7: DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED. THE COURT SETS A HEARING ON WHETHER CAUSES OF ACTION NUMBERS 3 AND 6 SHOULD BE BIFURCATED FROM THE REMAINING CAUSES OF ACTION ON FEBRUARY 17, 2023 AT 8:30 A.M. IN DEPARTMENT 9. THE PARTIES ARE TO FILE AND SERVE ON ONE ANOTHER BRIEFS ON THE ISSUE OF BIFURCATION BY NO LATER THAN JANUARY 27, 2023. RESPONSIVE BRIEFS, IF ANY, ARE TO BE FILED AND SERVED ON ONE ANOTHER BY NO LATER THAN FEBRUARY 6, 2023. IN THE ALTERNATIVE, IF THE PARTIES AGREE THAT THE ISSUE SHOULD BE BIFURCATED, THE PARTIES ARE DIRECTED TO SUBMIT A STIPULATION TO THE COURT REGARDING THE BIFURCATION. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY

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APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

#8. JOHN CONCEPCION V. AUDREY ESTELLE MIN 22UD0283

Procedural Background

On October 24, 2022, Defendants filed and served a Motion to Strike Complaint Served on October 16. This motion follows a Motion to Quash Service of Summons, or in the Alternative, Motion to Strike Complaint. Plaintiff's Opposition to Motion to Quash was filed on November 22, 2022.

Standard of Review

Any party may, prior to the time required to respond to a pleading, file a motion to strike the pleading in its entirety or any part thereof. Cal. Civ. Pro. § 435(b)(1). "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ¶ (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. ¶ (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Cal. Civ. Pro. § 436.

"The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." Cal. Civ. Pro. § 437(a). "Where the motion to strike is based on matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." Cal. Civ. Pro. § 437(b).

Judicial Notice

Defendants have filed a Request for Judicial Notice asking the court to take notice of Judicial Council of California Form UD-100, revised on September 1, 2020, titled Complaint - - Unlawful Detainer.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[r]ecords of (1) any court of this state or (2)

any court of record of the United States or of any state of the United States." Cal. Evid. Code § 452(d).

While Section 452 provides that the court "may" take judicial notice of the listed matters, Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

Defendants' request for judicial notice of a Judicial Council form falls within the confines of the Section 452/453 framework as a record of the State of California. Defendants included their request with the filing and service of their motion. They provided the court, and the opposing party a copy of the subject document as well as the URL for downloading it. Therefore, the court finds Defendants have provided sufficient notice of their request for judicial notice and have furnished the court with sufficient information that judicial notice shall be taken. Defendants request for judicial notice of Judicial Council of California Form UD-100, revised on September 1, 2020, titled Complaint - - Unlawful Detainer is granted.

Motion to Strike

Defendants move to strike the complaint because neither it, nor the cover sheet, were verified, the complaint did not include a copy of the written lease agreement, and it was made using an outdated Judicial Council form. Defendants further argue that a copy of the written lease is required to have been attached to the complaint because this is not an action solely for unpaid rent but, according to the complaint, Plaintiffs are also seeking attorney's fees based on a provision in the lease agreement. Defendants ask to strike the complaint and mandatory cover sheet in full, but, in the alternative, if the court orders Plaintiffs to amend these documents to correct the deficiencies, then Defendants ask that Plaintiffs be required to re-serve the amended documents.

Plaintiffs argue that the Judicial Council forms are not mandatory and as long as the complaint provides facts sufficient to state a cause of action then the complaint should stand. Further, Plaintiffs argue that it was not necessary to attach a copy of the written lease as the complaint

seeks only unpaid rent. Finally, Plaintiffs concede that the complaint is not verified by Plaintiffs, but it is verified by the property manager who is the "Person Most Knowledgeable."

Verification

Code of Civil Procedure Section 1166 expressly states that a complaint shall "[b]e verified and include the typed or printed name of the person verifying the complaint." Cal. Civ. Pro. § 1166(a)(1). However, Section 1166 does not specify who is to provide the verification. *See Id.* It has been held that a verification "…made by an agent who averred the facts set out in the complaint were within his own knowledge," was sufficient to satisfy the verification requirements. H.G. Bittleston Law & Collection Agency v. Howard, 172 Cal. 357 (1916).

Here, the complaint and the cover sheet were signed by the property manager along with a declaration identifying the affiant as the property manager with knowledge of the facts alleged in the pleading. This is sufficient to ensure good faith in the factual allegations of the complaint and to satisfy the requirements of Section 1166; therefore, Defendants' Motion to Strike for lack of verification is denied.

Lease Attachment

Generally speaking, a copy of any written lease or addenda is to be attached to the complaint in any action regarding residential property. Cal. Civ. Pro. § 1166(d)(1)(B). However, Section 1166 provides several exceptions to this general rule; and, where the plaintiff fails to attach the lease, "…the court *shall* grant leave to amend the complaint for a five-day period in order to include the required attachments. Cal. Civ. Pro. § 1166(d)(2).

Defendants correctly note that the complaint seeks attorney's fees pursuant to a written agreement between the parties. This is separate and apart from the past-due rent being sought. As such, Defendants' Motion to Strike the complaint is granted on the basis that the lease agreement is not attached and the complaint seeks more than just unpaid rent. Plaintiffs are granted leave to file an amended complaint by no later than December 23, 2022.

Judicial Council Form

Code of Civil Procedure Section 425.12 directs the Judicial Council to develop and approve official forms for use in trial courts; however, it does not mandate the use of such forms. *See* Cal. Civ. Pro. § 425.12. The Judicial Council forms are separated into two groups, mandatory forms, and optional forms. *See* Cal. Rule Ct. 1.31 & 1.35. Those forms that are mandatory are required to state "Mandatory Form" at the bottom of the first page. Cal. Rule Ct. 1.31. Optional forms state "Optional Form" on the bottom of the first page. Cal. Rule Ct. 1.35.

The unlawful detainer complaint form clearly states that the form is "approved for optional use." There is no requirement that the form be used at all, much less that the most current version of the form be used. As long as the complaint contains a statement of facts sufficient to constitute a cause of action, then the complaint is adequate to commence a civil action. Cal. Civ. Pro. § 425.10(a).

Here, the judicial counsel form used was optional. As long as the complaint has stated facts sufficient to constitute a cause of action, and Defendants make no argument that it does not, then the complaint is acceptable and Defendants' Motion to Strike on this ground is denied.

TENTATIVE RULING #8: DEFENDANTS' MOTION TO STRIKE FOR LACK OF VERIFICATION AND FOR FAILURE TO USE THE MOST CURRENT JUDICIAL COUNCIL FORM IS DENIED. DEFENDANTS' MOTION TO STRIKE THE COMPLAINT IS GRANTED ON THE BASIS THAT THE LEASE AGREEMENT IS NOT ATTACHED AND THE COMPLAINT SEEKS MORE THAN JUST UNPAID RENT. PLAINTIFFS ARE GRANTED LEAVE TO FILE AN AMENDED COMPLAINT BY NO LATER THAN DECEMBER 23, 2022. SERVICE OF THE AMENDED COMPLAINT IS TO COMPLY WITH THE CODE OF CIVIL PROCEDURE. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF

SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR ZOOM INFORMATION.

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#9. AMBER ASHLEY V. JAMIL NOUHI 22CV0840

TENTATIVE RULING #9: THE MATTER IS CONTINUED TO DECEMBER 23, 2022 AT 8:30 A.M. IN DEPARTEMENT 9.