July 11, 2025
Dept. 9
Tentative Rulings

1.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS**
Motion to Dismiss & CMC		

Pursuant to the Minute Order from the May 23, 2025 hearing, Defendant Yes 2 Ventures, Inc. was to re-serve the Motion to Plaintiff's P.O. Box address and file a proof of service. This has not been done. The Court notes that no Opposition has been filed.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, JULY 11, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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).

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2.	**23CV2279**	**SALANOA v. QUALITY INN & SUITES**
Motion to Set Prove-Up Hearing		

Plaintiff filed the Complaint on December 28, 2023. Defendants Quality Inn & Suites and Amar Sangha were served on January 26, 2024 and February 8, 2024, respectively, but both failed to file a responsive pleading. The Court entered default on March 26, 2024. Pursuant to California Code of Civil Procedure § 585(b), when a defendant fails to respond and the amount of damages is not liquidated, a hearing must be held to assess damages before judgment can be entered. Plaintiff hereby requests a date for the prove-up hearing so the Plaintiff may present evidence supporting the claim for damages. There is no opposition.

TENTATIVE RULING #2:

MOTION GRANTED. APPEARANCES REQUIRED ON FRIDAY, JULY 11, 2025, AT 8:30 AM IN DEPARTMENT NINE TO SELECT DATE FOR PROVE-UP HEARING.

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3.	**PC20190656**	**AFRICA v. LENNAR HOMES**
Motion to Dismiss		

On April 9, 2025, the parties stipulated to lift the stay in order to proceed with the litigation, which became an Order of the Court on April 16, 2025. Based upon defense counsel's June 24, 2025, update to the Court, it appears that the Motion to Dismiss does not need to be heard at this time as the parties are engaging in discovery. Counsel requests a case management conference be set at least 90 days out.

TENTATIVE RULING #3:

MOTION TO DISMISS HEREBY DROPPED.

A CASE MANAGEMENT CONFERENCE IS SET FOR NOVEMBER 18, 2025 AT 8:30 A.M. IN DEPARTMENT 10.

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4.	**PC20200246**	**FRANKLIN v. NORCAL GOLD INC**
Motions (14)		

On May 29, 2025, Defendant filed a motion to dismiss the action for failure to bring the matter to trial within five years of the date of commencement of the action under Code of Civil Procedure section 583.310. At an ex parte hearing on June 3, 2025, the court granted Defendant's request to specially set the hearing on the motion, to vacate the July 8, 2025 trial date, and to stay the action pending resolution of the motion. Plaintiff stipulated to these orders. The court notes that Defendant also has filed several discovery motions set to be heard on July 11, 2025; per the pending stay, the court drops those matters from calendar and will reset them upon resolution of the motion to dismiss,

On February 18, 2025, over Defendant's objection the court continued the April 22, 2025 trial date to July 8, 2025. As the action was commenced on May 22, 2020, the five-year mark, absent any time periods being excluded under Code of Civil Procedure section 583.340, was May 22, 2025. In continuing the trial to July 8, 2025, after the five-year mark, the court found under Code of Civil Procedure section 583.340, subdivision (c), that bringing the action to trial prior to the five-year mark would have been impossible, impracticable, or futile. The court relied specifically on Plaintiff's counsel engagement in a complex month-long arbitration in Los Angeles which he represented would include post-trial briefing and potentially a second phase of trial and/or oral argument, during which time Plaintiff would be unavailable to reasonably prepare for trial or participate in pre-trial hearings, including the mandatory settlement conference. The court further generally referred to other events throughout the course of the case that delayed bringing the action to trial.

Defendant challenges the court's findings in its motion to dismiss, arguing that the circumstances of the case, particularly the month-long arbitration and related activities, did not make bringing the matter to trial within five years impossible, impracticable, or futile. Further, Defendant argues that Plaintiff's counsel should have exercised more diligence, for instance by requesting that the trial be advanced prior to the arbitration or objecting to the setting of the arbitration during a time that would make trial preparation in this matter more difficult. Defendant also claims that Plaintiff's counsel could seek another attorney in his office to cover this trial or alternatively to cover the arbitration.

Plaintiff in response reviews the procedural history of the case, including Defendant's dispositive motions (including a request for a second motion for summary judgment) which effectively delayed the setting of the trial for over 10 months and the court's own logistical challenges with limited judicial coverage which led to repeated continuances of settlement conferences, delaying resolution of the matter further. Finally, Plaintiff restates, as was expressed at the February 18, 2025 hearing, that counsel was effectively unable to prepare for and participate in trial activities, including the fact that the arbitration overlapped with the

mandatory settlement conference date, necessitating the continuance beyond the five-year mark.

The court has reviewed all the case authorities cited by the parties regarding Code of Civil Procedure section 583.31 et seq. The court in *Bruns v. E-Com. Exch., Inc.* (2011) 51 Cal. 4th 717, 730–31, writes:

> Under 583.340(c), the trial court must determine what is impossible, impracticable, or futile "in light of all the circumstances in the individual case, including the acts and conduct of the parties and the nature of the proceedings themselves. [Citations.] The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case." (*Moran v. Superior Court* (1983) 35 Cal.3d 229, 238, 197 Cal.Rptr. 546, 673 P.2d 216; see also *Tamburina v. Combined Ins. Co. of America* (2007) 147 Cal.App.4th 323, 326, 54 Cal.Rptr.3d 175 [trial court must determine whether plaintiff has shown a circumstance of impossibility, impracticability, or futility, a causal connection to the failure to move the case to trial, and that he or she was "reasonably diligent in prosecuting the case at all stages of the proceedings"].) A plaintiff's reasonable diligence alone does not preclude involuntary dismissal; it is simply one factor for assessing the existing exceptions of impossibility, impracticability, or futility. (*Baccus v. Superior Court* (1989) 207 Cal.App.3d 1526, 1532–1533, 255 Cal.Rptr. 781.)

The *Bruns* court adds that the trial court is best positioned to evaluate the factual circumstances with the "reasonable diligence" standard being the appropriate guideline for evaluating whether the circumstances made it impossible, impracticable, or futile for plaintiff to bring the matter to trial within five year due to factors out of plaintiff's control. (*Ibid.*)

At the same time, "every period of time during which the plaintiff does not have it within his power to bring the case to trial is not to be excluded in making the computation. [Citation.]" (*Sierra Nevada Memorial–Miners Hospital, Inc. v. Superior Court* (1990) 217 Cal.App.3d 464, 472.) Further, usual and reasonable time spent in law and motion practice, waiting for time to get matters placed on calendar by the court, and so forth are already contemplated by the five-year period, and thus such time should not be excluded from the five-year period. (*Ibid.*)

The court is mindful of the public policy in favor of liberally construing the statute to allow for a trial on the merits. (*Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591.) With this policy in mind and considering the diligence in which Plaintiff has prosecuted the case, the court finds good cause to deny the motion to dismiss. In the present matter, the court finds that Plaintiff has taken reasonable steps at all stages of litigation to bring this matter to trial. The fact that trial was set a month prior to the five-year mark is not due to any lack of diligence on the part of Plaintiff. Rather, the court agrees with Plaintiff that the resolution of Defendant's dispositive motions, which included a motion for summary judgment, 90 days for the court to

issue its written ruling denying the motion, a motion for reconsideration after the denial, and then a motion to file a second motion for summary judgment (which the court permitted but ultimately denied) delayed the setting of trial for about 10 months. Moreover, the court's repeated continuances of the settlement conference further delayed prosecution of the matter. The court relies upon these factors not to deduct time from the five-year period, recognizing the holding in *Sierrra Nevada*, but instead relies upon these factors in supporting its finding that the delay in setting the initial trial date of April 22, 2025 was not due to any lack of diligence on the part of Plaintiff. (The court also clarifies that it finds that Defendant acted in good faith in their law and motion practice.)

The court finds that Plaintiff further acted with diligence in seeking a continuance of the trial date in early December 2024, as reflected in the e-mail correspondence attached to the supporting declaration for Plaintiff's February 2025 continuance request. Per the e-mail correspondence, over four months prior to the trial date, Defendant indicated their amenability to agree to a 90-day continuance of the trial. However, after Plaintiff presented Defendant with a stipulation on January 15, 2025, despite repeated follow-up e-mails from Plaintiff, Defendant's counsel took until February 6, 2025 to indicate that their clients were unwilling to agree to the continuance. The e-mails reflect that Plaintiff sought to avoid filing an ex parte request for a continuance by attempting to confer further with Defendant but ultimately filed the request on February 14, 2025, with the motion heard the following court day.

Had an earlier request been made, it may have been conceivable that the court could have advanced the trial date and avoided a conflict with the arbitration in the other matter. However, based on the nearly two-month delay from when Defendant indicated a willingness to continue to trial to their change in position, the court declines to find that Plaintiff acted unreasonably in not filing the request earlier. By the time the request was filed, the court finds there would have been inadequate time to hold a jury trial (estimated at 7 days which only can occur on Tuesdays, Wednesdays, and Thursdays per the court's calendar) and all necessary pre-trial hearings prior to the arbitration set to begin on March 17, 2025.

The court also rejects the contention that Plaintiff's counsel could have had another attorney at his firm cover the trial. As Plaintiff's counsel has been the lead counsel throughout the court finds it would be prejudicial to bring in separate counsel, even if available, who had not been involved in developing the case strategy for the past five plus years. Instead, the court upholds the principle of permitting Plaintiff to have his chosen counsel.

With this context, the court reaffirms its February 18, 2025 finding that it would have been impossible, impracticable, or futile to maintain the April 22, 2025 trial date. Plaintiff's counsel represented at the February 18, 2025 hearing (and stated in his declaration) that the arbitration would last from March 17 to April 11. He added that the arbitration was complex and involved a three-judge panel that continued the arbitration to dates to which they all were available and that the dates were set in stone. Plaintiff's counsel stated that arbitration would

involve post-trial briefing and potentially a second phase of trial or oral argument, making Plaintiff effectively unavailable for trial for 60 days, starting just prior to the commencement of the arbitration.

The court in continuing the April 22, 2025 trial to July 8, 2025 considered all of these factors as well as the court's own trial schedule. The court implicitly (and now explicitly) finds that during the time period between February 18, 2025 and March 17, 2025 (when insufficient time was available prior to the start of arbitration to hold the trial), between March 17, 2025 and April 11, 2025 (for the arbitration itself), and between April 12 and May 2 (for post-trial activities) it would have been futile to bring the matter to trial. The court therefore excludes this 73-day period from the five-year period under Code of Civil Procedure section 583.310.

As such, the court denies Defendant's motion. Parties are ordered to appear to reset trial and related dates and to reset the dates for the discovery motions.

TENTATIVE RULING #4:

THE COURT DENIES DEFENDANT'S MOTION. PARTIES ARE ORDERED TO APPEAR TO RESET TRIAL AND RELATED DATES AND TO RESET THE DATES FOR THE DISCOVERY MOTIONS.

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5.	**21CV0054**	**HAAS v. EDGECOMB**
Compromise Claim		

On February 9, 2024, Robin L. Klomparens, an attorney on behalf of the Petitioner who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on February 9, 2024. Ms. Klomparens was again appointed guardian ad litem on December 13, 2024.

This is a Petition for approval of compromise of claim for person with a disability. The Petition states the Petitioner sustained multiple fractured ribs and a fracture to her left clavicle, along with injuries to her face, neck, left arm, back, pelvis, and chest, after Defendant struck Petitioner with his vehicle. A copy of the accident investigation report was filed with the Petition, as required by Local Rule 7.10.12A(4). Petitioner requests the court authorize a compromise of the Petitioner's claim against defendant in the gross amount of $295,000.00.

The Petition states the Petitioner incurred $39,189.77 in medical expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the Petitioner has fully recovered and there are no permanent injuries. A doctor's report concerning the Petitioner's condition and prognosis of recovery is not attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3). While medical reports were included, the most recent report was dated September 14, 2021; Petitioner was not fully recovered, and she was still undergoing treatment for ongoing and new issues. Her prognosis was not addressed.

The Petitioner's attorney requests attorney's fees in the amount of $73,192.15, which represents 25% of the gross settlement amount less costs in the amount of $2,231.41. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) Attachment 13a of the Petition includes a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The Petitioner's attorney also requests reimbursement for costs in the amount of $11,871.91. There are copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6). Of particular concern to the Court, are the $75.00 "File Set-Up Fee" and $470.00 in "Telephone Charges" which are seemingly part of firm overhead and not proper expenses.

With respect to the $170,746.17 due to the minor, the Petition requests that it be paid or transferred to the trustee of Petitioner's special needs trust. See attachment 18b(4).

Melanie Haas' presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #5:

APPEARANCES REQUIRED ON FRIDAY, JULY 11, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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7.	**23CV0238**	**RUGER v. EL DORADO**
Motion for Reconsideration		

Plaintiff moves the Court to reconsider its Order on Defendants' Demurrer, pursuant to Code of Civil Procedure § 1008.

On July 18, 2024, Plaintiff Tracy Ruger filed her First Amended Complaint for Damages. On or about November 8, 2024, Defendant County Of El Dorado, Kowalczyk, Grover, Garibay, Plassmeyer, Sapien, Reimche, Robertson, Estes, and Hazlet (hereinafter referred to collectively as "Defendants") filed their Demurrer to Plaintiff's First Amended Complaint for Damages with a hearing set on March 28, 2025.

On November 19, 2024, Defendant Wellpath, LLC filed its Suggestion of Bankruptcy and Notice of Stay with the El Dorado County Superior Court. Thereafter, the Court entered a Stay of Proceeding as to Defendant, Wellpath, LLC, Defendant Wellpath Community Care, LLC, Defendant Wellpath Management, INC., and Defendant Wellpath Recovery Solutions, LLC. From and after November 19, 2024, Plaintiff at all relevant times, reasonably believed that Notice of Stay filed on November 19, 2025, by Defendant Wellpath, LLC stayed the entire action. Counsel for the Defendants was also under the impression that the entire action was stayed because of the filing of Chapter 11 bankruptcy by Defendant Wellpath, LLC. on November 11, 2024, pursuant to 11 U.S.C. § 362.

On March 28, 2025, the Honorable Gary S. Slossberg granted Defendants' demurrer without leave to amend in the tentative ruling that it issued and adopted. The demurrer was sustained without leave to amend, and Defendants were dismissed, and judgment was to be entered against Plaintiff.

On April 22, 2025, the Honorable Gary S. Slossberg executed and entered the Order on Defendant's Demurrer to Plaintiff's First Amended Complaint. On May 1, 2025, Plaintiff was electronically served with the written Notice of Entry of Order on Defendants' Demurrer. Plaintiff was served a formal copy of the Court's order as required by Code of Civil Procedure §1019.5 on May 1, 2025.

Defendants oppose Plaintiff's Motion, that this Court is unable to grant reconsideration once judgment has been entered, which occurred on May 6, 2025. Case law is clear that "[o]nce the trial court has entered judgment, it is without power to grant reconsideration." (*APRI Insurance Co. S.A. v. Superior Court* (1999) 76 Cal. App. 4th 176, 181.) "It is settled law that a motion for reconsideration is ineffectual if it is filed after entry of judgment." (*Marshall v. Webster* (2020) 54 Cal.App.5th 275, 281.)

Per the case law, the court finds it is divested of jurisdiction to reconsider its prior orders under Code of Civil Procedure § 1008 and therefore denies the motion.

TENTATIVE RULING #7:

MOTION FOR RECONSIDERATION DENIED.

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).

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8.	**25CV0606**	**KELLER v. STRICKLAND**
Motion for Service by Publication		

Plaintiff Julie Renee Impeller ("Plaintiff') hereby requests that this Court order that Defendant Linda Mann ("Mann") and all persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title thereto ("Unknown Defendants"), be served by publication in the Mountain Democrat, or any other newspaper of general circulation in this state that is most likely to give these defendants notice of the pendency of this action. Defendant Mann, who is a necessary and proper party and has an interest in the real property that forms the basis of the action, cannot with reasonable diligence be served in another manner. Also, Plaintiff, despite exercising reasonable diligence to locate the identities and addresses of the Unknown Defendants, has been unable to do so.

On or around March 3, 2025, Plaintiff filed her complaint for (1) Quiet Title to Prescriptive Easement; (2) Quiet Title to Equitable Easement; (3) Quiet Title to Easement by Necessity; (4) Enforcement of Easement Pursuant to CC § 809; (5) Private Nuisance; (6) Intentional Infliction of Emotional Distress; and (7) Declaratory Relief. (Decl. of Gray, ¶ 3).

On or around March 11, 2025, Plaintiff contracted with Nationwide Legal Services to serve the Defendants with the initial pleadings in this matter. (Decl. of Gray, ¶ 4). On or around March 16, 2025, Defendant Matthew Strickland ("Strickland") was served with the summons, complaint, and civil case cover sheet. (Decl. of Gray, ¶ 5). On or around March 17, 2025, Plaintiff contracted with Nationwide Legal Services to perform a skip trace on Defendant Mann, in order to locate her whereabouts for service. (Decl. of Gray, ¶ 6). The skip trace indicated that Defendant Mann resides at the property owned by her and Defendant Stickland, the property that forms the basis of the underlying action, 4650 Live Oak Rd, Diamond Springs, CA 95619. (Decl, of Gray, ¶ 7). So, service attempts were commenced at 4650 Live Oak Road until one of the residents informed the process server that Defendant Mann had moved years prior and their whereabouts were unknown. (Decl. of Gray, ¶¶ 8-9).

Plaintiff does not know, and has been unable to determine, the address of where Defendant Mann is currently living. (Decl. of Gray, ¶ 10). Without any other known address or contact information, Plaintiff cannot proceed with any additional service attempts on Defendant Mann. (Decl. of Gray, ¶ 11). As for the Unknown Defendants, Plaintiff has performed a title search on the 4650 Live Oak Road property and only Defendant Strickland and Defendant Mann are listed as having any interest in the property. (Decl. of Gray, ¶ 12). Plaintiff does not know who else might have an interest in the property or the litigation.

California Code of Civil Procedure § 415.50(a) states:

> (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot

with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

Plaintiff argues that Defendant Mann is unable to be located despite the skip trace and public records search being performed. Plaintiff further argues that Defendant Mann is on title to the property that is subject to the underlying action and is therefore a necessary or proper party and has an interest in the real property.

California Code of Civil Procedure § 763.010(b) states:

If upon affidavit it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication pursuant to Section 415.50 and the provisions of this article. The court may, in its discretion, appoint a referee to investigate whether the plaintiff has used reasonable diligence to ascertain the identity and residence of persons sought to be served by publication, and the court may rely on the report of the referee instead of the affidavit of the plaintiff in making the order for service by publication.

Plaintiff argues that counsel performed a title search on the property to determine who has an interest, which constitutes reasonable diligence.

The Motion is unopposed.

TENTATIVE RULING #8:

ABSENT OBJECTION, MOTION 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).

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9.	**24CV2337**	**TD BANK USA v. THOMSON**
Motion to Deem Matters Admitted		

Pursuant to the Declaration of attorney Brian Langedyk, Plaintiff served by mail its first set of requests for admissions on Defendant on January 8, 2025 On February 28, 2025, Counsel states he did send a letter to Defendant pointing out that the responses were due and providing an extension. Defendant has failed to serve any response to the requests for admission. Therefore, Plaintiff requests that the truth of facts specified be deemed admitted.

CCP § 2033.280 provides that if a party to whom requests for admissions have been directed fails to serve a timely response, that party thereby waives any objection to the requests, including one based on privilege or on the protection for work product under § 2018.010 et seq. It further provides that the requesting party may move for an order that the truth of any facts specified in the requests be deemed admitted. The court "shall" make this order unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admissions that is in substantial compliance with paragraph (1) of subdivision (f).

While Plaintiff has made no specific request for sanctions, under CCP § 2033.280(c) it is mandatory for the court to impose sanctions on a party whose failure to respond to a request for admissions necessitates a motion to deem matters admitted. The court imposes a nominal sanction of $50 payable within 30 days of the date of service of the signed order, finding such amount sufficient to deter any future failures to respond.

TENTATIVE RULING #9:

MOTION GRANTED. THE COURT ORDERS DEFENDANT TO PAY PLAINTIFF $50 IN SANCTIONS, PAYABLE WITHIN 30 DAYS OF THE DATE OF SERVICE OF THE SIGNED ORDER.

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).

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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.

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10.	**23CV1495**	**KAFATI v. FORD MOTOR COMPANY**
MSJ		

On August 31, 2025, Plaintiff filed a Complaint alleging six causes of action against defendant Ford Motor Company (hereinafter "Defendant") and others. One such cause of action alleges a claim of Fraudulent Inducement – Concealment. Defendant now moves for summary adjudication on that cause of action.

Defendant filed and served its Notice of Motion and Motion for Summary Adjudication, and supporting documents, on January 23, 2025. To date, Plaintiff has not opposed the motion.

This matter stems from Plaintiff's purchase of a new 2019 Ford Expedition on September 2, 2019. Plaintiff now claims the vehicle had a transmission defect at the time of purchase. In the Complaint, Plaintiff claims, among other things, that Defendant was aware of the defective transmission and failed to disclose that fact to Plaintiff prior to purchase.

Defendant sets forth three succinct arguments in support of its motion: (1) Plaintiff's claim does not satisfy the mandatory requirements as set forth in *Rattagan v. Uber Technologies, Inc.*; (2) Plaintiff has not, and cannot, establish the requisite elements of a prima facie case of fraudulent inducement; and (3) Plaintiff has not, and cannot, establish that Defendant had knowledge of the alleged defect prior to Plaintiff's purchase thereof.

The standard for a Motion for Summary Adjudication is the same as that for a Motion for Summary Judgment and as such, one shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law on the challenged issue. Cal. Civ. Pro. § 437c. A defendant moving for summary adjudication need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996).

Given the moving party's burden of proof, even a motion for summary adjudication which is left unopposed may still be denied if the moving party fails to meet its burden. Harman v. Mono General Hospital, 131 Cal. App. 3d 607, 613 (1982). Nevertheless, where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010). "[A] moving defendant may rely on factually devoid discovery responses to shift the burden of proof pursuant to section 437c, subdivision (o)(2)." Union Bank v. Sup. Ct. of L.A., et al., 31 Cal. App. 4th 573, 590 (1995).

Here, the court finds that Defendant has met its burden as the moving party and Plaintiff has set forth no evidence in opposition. Most notably, with the evidence before the court, Plaintiff has not, and likely cannot, establish the requisite elements of fraudulent inducement, as such the Motion for Summary Adjudication is granted as to the fifth cause of action.

"[T]he elements of a cause of action for fraud based on concealment are: '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damages.'" Lovejoy v. AT&T Corp., 92 Cal. App. 4th 85, 96 (2001) *citing* Marketing West, Inc. v. Sanyo Fisher (USA) Corp., 6 Cal. App. 4th 603, 612-613 (1992). Each of these elements presupposes knowledge on the part of the defendant.

Here, Defendant propounded discovery requesting all facts, witnesses, and documents that support Plaintiff's claim for fraudulent inducement. Plaintiff's responses cited only the Complaint, the repair history for the vehicle, and the 17 pages of documents she produced which included the sales contract for the subject vehicle, repair orders, and a recall notice dated July of 2023 (four years after she purchased the vehicle). Furthermore, Plaintiff cites only herself and "unidentified dealer technicians" who were involved in the repairs of the vehicle as witnesses with knowledge of the fraudulent inducement claim. These responses are factually devoid and fail to establish that Defendant had any knowledge of the alleged defect prior to Plaintiff's purchase of the vehicle. Without establishing prior knowledge, Plaintiff simply cannot establish that Defendant intentionally concealed or suppressed the transmission defect with the intent of defrauding Plaintiff. For the foregoing reasons, the Motion for Summary Adjudication is granted as to the Fifth Cause of Action, Fraudulent Inducement – Concealment.

Because Plaintiff has not established the requisite elements for a prima facie case of fraudulent inducement – concealment, the court does not find it necessary to address the arguments made under *Rattagan*.

TENTATIVE RULING #10:

THE MOTION FOR SUMMARY ADJUDICATION IS GRANTED AS TO THE FIFTH CAUSE OF ACTION, FRAUDULENT INDUCEMENT – CONCEALMENT.

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).

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11.	**24CV0536**	**RANDOLPH v. AMERICAN HONDA MOTOR CO.**
MSJ		

Pursuant to Code of Civil Procedure section 437c, defendant moves for summary judgment or, in the alternative, summary adjudication, on plaintiff's complaint.

On June 27, 2025, plaintiff filed an untimely opposition.[1] Defendant objects to the untimely filing and requests the court to strike the opposition. The court notes that defendant's reply brief addresses the substantive arguments in plaintiff's opposition. Pursuant to California Rule of Court 3.1300, subdivision (d), the court exercises its discretion to consider the untimely opposition. (Cal. Rules Ct., R. 3.1300, subd. (d).)

Next, pursuant to Code of Civil Procedure section 437c, subdivision (h),[2] plaintiff requests the court to continue the hearing, or alternatively, deny defendant's motion on the grounds that defendant has withheld discovery that would support plaintiff's opposition to the motion. On May 30, 2025, the court granted, in part, plaintiff's motion to compel production of documents. To date, however, defendant has not served its verified further response. The court grants plaintiff's request for a continuance to allow for the discovery.

Appearances are required to set a deadline for defendant's discovery response, further briefing, and a new trial date, as necessary.

TENTATIVE RULING #11: PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 437c, SUBDIVISION (h), THE COURT GRANTS PLAINTIFF'S REQUEST FOR A CONTINUANCE OF THE HEARING. APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 11, 2025, TO SET A DEADLINE FOR DEFENDANT'S DISCOVERY RESPONSES, FURTHER BRIEFING, AND A NEW TRIAL DATE, AS NECESSARY.

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.

[1] The hearing on defendant's motion was originally set for May 2, 2025. On April 17, 2025, the court granted plaintiff's ex parte application to continue the hearing and ordered that any responsive pleadings to defendant's motion shall be filed and served by May 14, 2025.
[2] Code of Civil Procedure section 437c, subdivision (h) provides in relevant part, "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, 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." (*Ibid.*)

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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12.	**24CV2747**	**DEMEYER v. PALASHEWSKI**
Motion to Strike		

Plaintiff filed a Verified Complaint ("Complaint") on December 6, 2024. On or about January 10, 2025, Defendant Kari Palashewski ("Defendant") filed an answer ("Answer"). Plaintiff seeks to strike Defendant's Answer arguing it does not comply with California Code of Civil Procedure § 446(a) and contains improper material.

"When the complaint is verified, the answer shall be verified." Cal. Code Civ. Proc. § 446(a). "If the complaint is verified…the denial of the allegations shall be made positively or according to the information and belief of the defendant." Cal. Code Civ. Proc. § 431.30(d). "The court may, upon a motion made pursuant to Section 435…[s]trike 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. Code Civ. Proc. § 436(b).

The Complaint is verified. The Answer is not verified. Therefore, the Court finds that the Answer does not comply with California Code of Civil Procedure § 446(a) and is hereby stricken, with leave to amend. Defendant was given until July 11, 2025, to file an Amended Answer. Defendant filed an Amended Answer on June 16, 2025; however, it is still not verified. Therefore, Plaintiff's Motion to Strike is granted with leave to amend.

TENTATIVE RULING #12:

MOTION TO STRIKE IS GRANTED WITH LEAVE TO AMEND WITHIN 10 DAYS OF SERVICE OF THE SIGNED ORDER.

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).

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13.	**24CV1948**	**BACIGALUPI v. YIP**
Demurrer		

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

This case involves the purchase of a home by the parties, who were in a relationship at the time. The parties had an agreement regarding contributions to the purchase and ongoing monthly payments. However, the relationship deteriorated, Plaintiff obtained a restraining order against Defendant, forcing him to move out of the home, and litigation ensued. As part of the restraining order, Judge Balfour ordered that possession and control of the residence be provided to Plaintiff. The Complaint includes 4 causes of action: (1) Breach of Contract; (2) Violation of Cal. Penal Code § 496(c); (3) Battery; and (4) Fraud.

Defendant/Cross-Complainant filed a Cross-Complaint that includes 4 causes of action: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Quiet Title; and (4) Declaratory Relief. Plaintiff/Cross-Defendant ("Plaintiff") demurs to the First Cause of Action on the grounds that Cross-Complainant has failed to state fats sufficient to constitute a cause of action for breach of contract.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**
>
> Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

According to the Declaration of John R. Garner, the parties met and conferred extensively on multiple occasions regarding the demurrer. While the Declaration does not comply with CCP § 430.41(a)(3) in that it does not describe the means by which the parties met and conferred, the Court will address the Demurrer.

Requests for Judicial Notice

There is no request for judicial notice.

Demurrer

To properly plead a breach of contract claim, Plaintiff argues that Defendant/Cross-Complainant must allege: 1. The existence of a valid contract; 2. Cross-Complainant's performance or excuse for nonperformance; 3. Plaintiff's breach; and 4. Resulting damages to Cross-Complainant. (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178.) Here, Plaintiff argues that the Defendant/Cross-Complaint fails to sufficiently plead one or more of these essential elements.

A valid contract requires mutual consent, lawful object, sufficient consideration, and capable parties. (Civ. Code §§ 1550, 1565.) Plaintiff argues the Cross-Complaint fails to attach a copy of the alleged contract or set forth its material terms with specificity. (*Otworth v. Southern Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 459 [the party must allege the contract either by its terms, set out verbatim in the complaint, or by its legal effect].) A vague reference to an agreement, without essential terms such as the obligations of each party, is insufficient to sustain a breach of contract claim. (*Hillsman v. Sutter Cmty. Hosps*. (1984) 153 Cal.App.3d 743, 749.)

A party seeking to enforce a contract must allege that they have performed their obligations or were excused from doing so. (*Consolidated World Invs., Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380.) Plaintiff argues that Defendant/Cross-Complainant fails to allege

that they performed their obligations under the contract or were excused from doing so, rendering the claim defective.

Even if a contract were sufficiently alleged, Plaintiff argues that Defendant/Cross-Complainant must still identify how Plaintiff allegedly breached the agreement. Generalized allegations of wrongdoing are insufficient. (*See Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1389 [F]acts alleging a breach, like all essential elements of a breach of contract cause of action, must be pleaded with specificity].) Plaintiff argues that Defendant/Cross-Complainant's vague references to non-performance do not specify what contractual obligations Plaintiff allegedly failed to meet.

Plaintiff argues that Defendant/Cross-Complainant must plead facts showing actual damages resulting from Plaintiff's alleged breach. (*Agam v. Gavra* (2015) 236 Cal.App.4th 91, 104.) Plaintiff argues that Defendant/Cross-Complaint fails to specify any measurable damages or how they resulted from Plaintiff's alleged conduct. Without this element, the breach of contract claim cannot stand.

Defendant/Cross-Complainant opposes the Demurrer, citing to the allegations in the Cross-Complaint regarding the breach of contract claim: (1) The parties agreed that Plaintiff would contribute $2,000.00 per month for the house; (2) Defendant/Cross-Complainant complied with and performed all actions required of him pursuant to the agreement; (3) Plaintiff did not perform pursuant to the agreement; and (4) as a proximate result of Plaintiff's breach of contract, Defendant/Cross-Complainant has sustained damages. (Cross-Complaint, ¶¶ 21-24).

The Court agrees that Defendant/Cross-Complainant fails to establish the first element – in that there is no agreement attached, and the material terms are not stated with specificity. While Defendant/Cross-Complainant states he complied with all actions required of him, he does not state what those are. Since the first element is not met, neither is the second element. In terms of the third element, Defendant/Cross-Complainant states that Plaintiff did not perform, but he fails to state how she did not perform. Defendant/Cross-Complainant states he sustained damages, which will be proven at trial, but does not attempt to describe any damages suffered. For these reasons, the Court sustains the Demurrer with leave to amend.

TENTATIVE RULING #13:

DEMURRER AS TO THE FIRST CAUSE OF ACTION SUSTAINED WITH LEAVE TO AMEND WITHIN 10 DAYS OF SERVICE OF THE SIGNED ORDER.

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).

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14.	**23CV0345**	**WORKMAN v. MOUNTAIN F ENTERPRISES et al**
MSJ		

On February 24, 2023, Plaintiff filed a Complaint alleging nine causes of action against defendants Mountain F. Enterprises, Inc. and Anthony Fadota (collectively referred to herein as "Defendants"). Defendants filed their Motion for Summary Judgment or, in the Alternative, Summary Adjudication on February 21, 2025. Plaintiff's opposition documents were filed on May 22, 2025. Defendants initially filed a Reply Brief – No Opposition Received but after receipt of the opposition Defendants filed their Reply and Response to Plaintiff's Separate Statement of Undisputed Material Facts on June 5, 2025.

This matter stems from Plaintiff's employment with Defendant Mountain F. Enterprises. Plaintiff's employment began on September 22, 2001 as an entry level journeyman tree trimmer working in Grass Valley. In October 2021, Plaintiff was appointed to the position Specialized Tree Equipment Operator and given a company truck. He took three days of sick leave in October of 2021 due to the birth of his child. In April of 2022, Plaintiff requested, and was approved for, a 4-week leave of absence. He did not tell Human Resources the reason for his leave. This leave was not classified as either FMLA or CFRA leave as Plaintiff did not qualify for either. On April 18th, Plaintiff began Paid Family Leave.

He returned to work 6 weeks later at which time he was assigned to work on the wood management crew at the Brownsville Yard with Superintendent Anthony Fadota. While the Brownsville Yard was a two-hour commute from Grass Valley, Plaintiff's prior unit was also relocated to Brownsville, thus even if Plaintiff's position had not changed his assigned location would have changed regardless. Plaintiff's work truck was returned to him within his first week back at work. Plaintiff complained several times regarding his new position and his assigned location. Soon after, he found employment elsewhere and voluntarily terminated his employment with Defendant.

The Complaint alleges the following nine causes of action: (1) Unlawful retaliation [Labor Code § 1102.5]; (2) Associational Disability Discrimination – FEHA; (3) Associational Sex Discrimination – FEHA; (4) Harassment – FEHA; (5) Retaliation – FEHA; (6) Failure to Prevent Discrimination – FEHA; (7) Wrongful Constructive Termination in Violation of Public Policy; (8) Failure to Provide Meal Breaks; and (9) Failure to Provide Rest Breaks. Defendants move for summary judgment on all causes of action. In the event summary judgment is not granted, they request summary adjudication.

A motion for summary judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. Cal. Civ. Pro. § 437c. A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by

affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996). Because of the drastic nature of a motion for summary judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be liberally construed. A-H Plating, Inc. v. American National Fire Ins. Co., 57 Cal. App. 4th 427, 433-434 (1997). Nevertheless, a plaintiff's subjective belief that employment events were retaliatory is not, in and of itself, sufficient to defeat a Motion for Summary Judgment. *See* Walker v. Boeing Corp., 218 F. Supp. 2d 1177, 1188 (2002).

After reviewing the filings of the parties and the pleadings in this matter, the court finds that Defendants are entitled to judgment as a matter of law with regard to causes of action numbers 1, 7, 8 and 9. Summary adjudication on the remaining causes of action is denied. The basis for this ruling is as follows.

Constructive Discharge and Adverse Employment Action

While constructive discharge in violation of public policy can act as its own stand-alone cause of action, it can also satisfy the adverse employment action element of a claim for harassment or discrimination. Plaintiff utilizes his claim for constructive discharge in both ways. He argues constructive discharge to satisfy the adverse employment action element of causes of action numbers 1 though 6; he also asserts constructive discharge in violation of public policy as its own stand-alone cause of action (number 7).

While it likely goes without saying, adverse employment action is a necessary element to any cause of action for harassment or discrimination such as those asserted by Plaintiff in his complaint. Plaintiff argues that he was constructively discharged from his position with Defendant and such constructive discharge satisfies this requirement.

"A constructive discharge is the practical and legal equivalent of a dismissal – the employee's resignation *must be employer-coerced*, not caused by the voluntary action of the employee…" Turner v. Anheuser-Busch, Inc., 7 Cal. 4th 1238, 1248 (1994)(emphasis added). "[T]he standard by which a constructive discharge is determined is an objective one – the question is "whether a reasonable person faced with the allegedly intolerable employer actions or conditions of employment would have *no reasonable alternative* except to quit." *Id.* (emphasis added).

Given the high standard of "no reasonable alternative," courts have required a showing that the employer's actions created "unreasonably harsh conditions, in excess of those faced by his [or her] co-workers…" (Goldsmith v. Mayor and City of Baltimore, 987 F. 2d 1064, 1072 (1993)) or that such actions were "intolerable," "aggravated," or "extraordinary and egregious." *Turner* at 1246-1247. Time and time again courts use this powerful language to highlight the fact that the bar to be applied to a constructive discharge claim is an exceedingly stringent one. In other words, "…an employee is not permitted to quit and sue simply because he or she does not like a new job assignment." Gibson v. Aro Corp., 32 Cal. App. 4th 1628, 1637 (1995). In keeping

with this high bar, courts have found that neither transferring an employee, nor a lack of promotion, is sufficient to meet the standard. Mueller v. County of L.A., 176 Cal. App. 4th 809 (2009); Cloud v. Casey, 76 Cal. App. 4th 895 (1999).

In the matter at hand, the pleadings cite to a myriad of circumstances that Plaintiff faced when he returned to work. His truck was taken while on leave, but it was promptly returned to him within a week of his return. UMF #27. He was moved to the Brownsville location, but he was not singled out in this. In fact, the entirety of the specialized tree unit (which was the unit Plaintiff was on prior to leave) was also moved to Brownsville. UMF #25. Plaintiff did not suffer any decrease in pay during his time employed with Defendant; in fact, his hourly rate only increased over the course of his employment. UMF #9.

Setting aside each of the foregoing circumstances, Plaintiff is left to argue only that his change in job position, from equipment operator to ground crew, was so intolerable that an objectively reasonable person would have *no alternative except to quit*. *See* Turner at. Pg. 1248. He makes this argument despite the fact that he was aware that by taking unprotected leave, he was not guaranteed to return to the same job position (in fact, he was informed of this in writing). UMF #17. And he was aware that when one equipment operator left, the next up would take their place. UMF #36. Nevertheless, the question to be asked is whether an objectively reasonable employee would find the change in position from equipment operator to ground crew, so intolerable that the employee would be left with no choice but to quit. Given the facts before the court, and the applicable law, the court does not, and cannot, find that this question can be answered in the affirmative. As such, Plaintiff's change in job position, without more, was not sufficient to rise to the exceedingly high standard of constructive discharge and Defendants are entitled to judgment on cause of action number 7.

Regarding the remaining causes of action, where constructive discharge is being asserted to satisfy the element of adverse employment action, the court is not in agreement with Defendants that they are entitled to judgment simply because constructive discharge cannot be established. While Plaintiff's change in job title does not, by itself, rise to the level of constructive discharge it may be sufficient to constitute an adverse employment action in satisfaction of that element for purposes of the harassment and discrimination allegations set forth in causes of action numbers 1-6.[1] As such, with the exception of the first cause of action (which is discussed in further detail below), the court does not find that Defendants are entitled to judgment regarding causes of action numbers 2-6.

First Cause of Action – Unlawful Retaliation [Labor Code § 1102.5]

In Plaintiff's first cause of action, he asserts a claim of unlawful retaliation based on the whistleblower statute codified in Labor Code § 1102.5. "To establish a prima facie case for whistleblower liability, a plaintiff must show that he or she was subjected to adverse

[1] While a change in job position, without a reduction in pay or benefits, is not automatically an adverse employment action, it can qualify as such if it materially affects the terms, conditions, or privileges of employment; the court finds this to be a question of fact for the jury. *See* Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1053-1054 (2005); *See also* Light v. Dept. of Parks & Rec., 14 Cal. App. 5th 75 (2017).

employment action **after** engaging in protected activity and that there was a causal connection between the two." Hansen v. Dept. of Corrections & Rehab., 171 Cal. App. 4th 1537, 1546 (2008) (emphasis added); *See also* Morgan v. Regents of University of Cal., 88 Cal. App. 4th 52,69 (2000).

While Plaintiff concedes that Paid Family Leave ("PFL") itself does not provide job protected leave, he argues that his protected activity was two-fold.

First, he argues that the act of taking PFL was protected activity under Section 1102.5, even if the PFL statute itself does not provide for job protection. This argument is without merit as Section 1102.5 provides protection for employees who disclose information regarding alleged legal violations (sections (a) and (b)), who refuse to participate in activity believed to be a violation of the law (section (c)), and for exercising their rights under either (a) or (b). Nothing in the statute provides for protection of employees who take voluntary leave from work or who collect PFL benefits.

Second, Plaintiff argues that his act of complaining about his reassignment constitutes protected activity under Section 1102.5. However, the alleged retaliatory actions (reassigning Plaintiff to a new location and changing his job position) occurred before Plaintiff made any such complaints. Therefore, Plaintiff cannot establish a causal connection between his complaints and the alleged retaliatory activity.

Without establishing the element of causation, Plaintiff cannot make a prima facie case under Labor Code § 1102.5. Accordingly, Defendants are entitled to judgment on this cause of action.

Eighth and Nineth Causes of Action – Failure to Provide Required Meal Breaks and Rest Breaks

Generally, an employer is required to abide by the meal and rest break provisions established by Section 512 of the Labor Code. However, subsections (e) and (f) combine to establish a carve out to the general rule where an employee is engaged in a "construction occupation," is "covered by a valid collective bargaining agreement" (hereinafter "CBA"), the CBA expressly provides for, among other things, meal periods of the employees, [and the CBA mandates] final and binding arbitration of disputes concerning application of its meal period provisions." Cal. Labor Code § 512(e) & (f).

Here, it is undisputed that Plaintiff was employed in a construction occupation. UMF #48. His employment was covered by the CBAs between Defendant and Local Union 1245 of the International Brotherhood of Electrical Workers, AFL-CIO. UMF #42. The applicable CBAs provided specific provisions for meal periods (UMF #45); and the CBAs expressly provide for final and binding arbitration of disputes. UMF #46. As such, the court is divested from jurisdiction to hear the issues on meal breaks.

Regarding rest breaks, the California Wage Orders mandate 10 minutes of rest time for every four hours, or major fraction thereof, of work. However, Section 301 of the Labor

Management Relations Act ("LMRA") preempts any such state law in instances of a dispute arising out of a labor contract, such as a CBA.

Once again, because it is undisputed that Plaintiff was covered by a valid CBA and the CBA contains an exclusive and binding arbitration process, the court is preempted from hearing Plaintiff's claims regarding rest breaks.

For the foregoing reasons, Defendants are entitled to judgment on causes of action 8 and 9.

Conclusion

For the reasons as set forth above, Defendants' Motion for Summary Adjudication is granted with regard to causes of action numbers 1, 7, 8, and 9. It is denied with regard to the remaining causes of action.

TENTATIVE RULING #14:

DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION IS GRANTED WITH REGARD TO CAUSES OF ACTION NUMBERS 1, 7, 8, AND 9. IT IS DENIED WITH REGARD TO THE REMAINING CAUSES OF ACTION.

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 BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.