February 6, 2026
Dept. 9
Tentative Rulings

1.	**24CV1130**	**DAWSON vs. EL DORADO IRRIGATION DISTRICT et al**
Protective Order		

Defendants request the Court to issue a protective order preventing or limiting the depositions of current and former Board members Lori Anzini, Alan Day, Brian Veercamp and George Osborne ("Board Members") pursuant to Code of Civil Procedure § 2025.420.

Defendants argue that the Board Members are not subject to deposition pursuant to the Apex Doctrine because 1) Plaintiff has not demonstrated that the Board Members as governmental officials have direct personal factual information pertaining to material issues in the action, and 2) that the information to be gained from the proposed depositions is not available through any other source. Rather, Defendants assert that the noticed depositions are purely meant to harass and annoy Defendants and are an abuse of the discovery process.

This employment action alleges gender discrimination, harassment, retaliation and failure to prevent discrimination, harassment, retaliation, citing Government Code § 12940. That statute makes it unlawful:

> For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

Government Code § 12940(a).

The proposed deponents are current and former members of the District's Board of Directors.

The Board Members were served with Notices of Deposition on December 11, 2025. The parties' counsel conducted meet and confer efforts between December 16, 2025, and December 23, 2025, but failed to reach accord.

Plaintiff has named the El Dorado Irrigation District ("District") as well as individuals Jose Perez, who is the Human Resources Director of the District, and Jim Abercrombie, identified in the First Amended Complaint ("FAC") as the Director of Engineering of the District. Plaintiff was an Engineering Manager. FAC, paras. 13, 15. In 2009, the District retained consultants to examine the District's job classifications and salaries. FAC, para. 14. Thereafter, until 2021, the Human Resources department conducted market analysis to evaluate job responsibilities and

salaries within the District. FAC. para.18-19. In 2018 and 2019 Defendant Perez was responsible for conducting market analysis that concluded that Plaintiff's salary was "at market." FAC, para. 20-22. Defendant Abercrombie provided input to the market analysis presented to Plaintiff by Defendant Perez. FAC, para. 21. Defendant Perez also had input into Plaintiff's performance review. FAC, para. 22. In 2019 Perez again conducted a market analysis and concluded that Plaintiff's salary was "at market." FAC, para. 23. In 2022, the consultant was again retained to perform the analysis of job classifications and compensation rates for the District. FAC, para. 24. Plaintiff alleges that Perez conducted selective market analysis that reflected preferential treatment of male employees, and that he refused to reveal records that would reveal this preference. FAC, para. 28-29.

In 2017, Plaintiff alleges that Defendant Abercrombie developed a pay incentive program but did not include Plaintiff in this program notwithstanding her demonstrable job accomplishments. FAC, paras. 31-34. She further alleges that Abercrombe directed negative looks and comments toward Plaintiff. FAC, paras. 35-36. This conduct by Perez and Abercrombie deteriorated as time went on. FAC, paras. 37-40.

Plaintiff followed grievance procedures thereafter which concluded with an investigation report that was presented to Plaintiff in September, 2020 by the District's General Counsel. FAC, para. 45-46. This report was also transmitted to the Board of Directors in November, 2019. Plaintiff asserts that Defendants Abercrombie and Perez provided false information to the investigator who compiled this report. FAC, paras. 48-49. Plaintiff alleges that the November 19, 2019, report to the Board by administrative staff "convinced the Board that there was a pay scale compression issue and that the lead administrative staff needed market adjustments to compensate for the pay compression." FAC, para. 51.

Plaintiff then filed a discrimination claim with the Department of Fair Employment and Housing in October, 2020. FAC, para. 47.

In 2022, a letter was sent to the District's Board of Directors outlining Plaintiff's allegations of discriminatory conduct towards her. FAC, para. 42. The Board of Directors held a closed session meeting under the Brown Act on January 23, 2023, to discuss Plaintiff's allegations, which was followed by a meeting involving further hostile conduct by Abercrombie. FAC, paras. 43-44. Plaintiffs alleges that she was forced to resign in July, 2023. FAC, para. 52.

On January 19, 2024, Mrs. Dawson filed her Complaint with the California Civil Rights Department.

The point of this extensive chronology is that the allegations of wrongful conduct in the FAC relate to the conduct of individuals Perez and Abercrombie in the capacity as employees of the District, within the scope of their employment as managers. Nowhere in the FAC does Plaintiff allege that any current or former member of the District's Board of Directors, or the Board itself, took any action or omission or made any statement, either as an individual or as a member of the Board of Directors that constituted or contributed to the alleged wrongful conduct.

Plaintiff's Opposition declares that the Board Members "possess direct personal factual information pertaining to material issues in this action that cannot be obtained through other sources." (Emphasis added.) In particular, Plaintiff seeks information from Board Members such as:

- Regarding a letter from Plaintiff's attorney sent to the Board of Directors in 2022 detailing her allegations, Board Member Anzini's impressions upon reading the letter, whether she discussed the letter or forwarded it to anyone, or whether she replied to it;
- Whether in 2020 Board Member Osborne communicated to Abercrombie that Plaintiff intended to file a complaint because Abercrombie's alleged illegal behavior became worse after that time;
- Regarding Board Member Penn, with whom Plaintiff was acquainted between 2020 and 2023 before he was elected to the Board in 2024, and how he came to be aware in 2024 that Plaintiff had "employment issues" with the District;
- Regarding Board Members Alan Day and Brian Veercamp, Plaintiff does not provide any specific information that is sought from those individuals.

Defendants oppose the deposition of the Board members under the "Apex Theory" as expressed in the case of Ross v. Superior Ct. of Riverside Cnty., 77 Cal. App. 5th 667 (2022). That case recognized parties "expansive discovery rights . . . regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... , if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Ross v. Superior Ct. of Riverside Cnty., 77 Cal. App. 5th at 679. Notwithstanding these broad rights of discovery, ""[t]he general rule in California and federal court is that agency heads and other top governmental executives are not subject to deposition absent compelling reasons." Id. at 679-680.

> "An exception will be made to this rule only when the deposing party makes two showings. First, the deposing party must show that the government official 'has direct personal *factual*' "—as opposed to *legal*—" 'information pertaining to material issues in the action.' " (*Contractors' State License Bd., supra*, 23 Cal.App.5th at p. 132, 232 Cal.Rptr.3d 558, quoting *Westly, supra*, 125 Cal.App.4th at p. 911, 23 Cal.Rptr.3d 154.)

> "Second, the deposing party must also show 'the information to be gained from the deposition is not available through any other source.' " (*Contractors' State License Bd.*, at p. 132, 232 Cal.Rptr.3d 558, quoting *Westly*, at p. 911, 23 Cal.Rptr.3d 154; see *Nagle, supra*, 28 Cal.App.4th at p. 1468, 34 Cal.Rptr.2d 281.)

Id. at 680.

The proposed depositions of Board Members fail on the first point. The Court finds that the information sought through deposition of the Board Members would not have "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." Evidence Code § 210.

TENTATIVE RULING #1: DEFENDANTS' MOTION FOR A PROTECTIVE ORDER TO PREVENT THE DEPOSITIONS OF LORI ANZINI, ALAN DAY, BRIAN VEERCAMP AND GEORGE OSBORNE 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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2.	**25CV3455**	**UNIFIRST CORP. vs. MCDANIEL'S AUTO REPAIR INC**
Confirm Arbitration Award		

This contractual dispute was the subject of an arbitration award that was entered on April 18, 2025. Petitioner requests this Court to confirm the award of $20,211.10 against McDaniel's Auto Repair, Inc. There is no opposition to the Petition on file with the Court.

The Petition meets the content requirements of Code of Civil Procedure § 1285, *et seq.*, in that it names all the parties to the arbitration, attaches the agreement to submit the dispute to arbitration, names the arbitrator and attaches a copy of the award and the written opinion of the arbitrator. Code of Civil Procedure § 1286 requires the Court to confirm an award if all these requirements are met.

However, there is insufficient evidence of proper service of the Petition. Proof of Service of the notice of the Petition was made by service to "Christina McDaniel" as owner of the corporation at the address of the business, the location of which was reflected on the contract between the parties and on the arbitration award. Service was effectuated on December 30, 2025, and the proof of service was filed with the Court on January 5, 2026, indicating that the process server handed the documents to Christina McDaniel "after due diligence to locate the registered agent for McDaniels' Auto Repair without success."

Code of Civil Procedure § 410.50 authorizes service to a corporation "by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process . . . .

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

The contract between the parties was signed by "Thomas McDaniel, Owner." The arbitration award, when concluded, was transmitted to "Christina McDaniel", but does not identify the title of that individual within the corporation. There is insufficient evidence on the record that service of the notice of this Petition was accomplished in accordance with the requirements of the statute.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 6, 2026, 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.

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3.	**26CV0045**	**OVERHOLTZER v. GRAY**
Release of Property Lien		

This is a Petition to release a lien on Petitioner's property. The lien at issue was recorded against Petitioner's property on April 12, 2024, for labor, materials and services. Petition, Exhibit B. The lien holder did not bring an enforcement action before the statutory period expired on July 11, 2024. Petitioner requested the lien holder remove the lien in correspondence dated December 9, 2025. Petition, Exhibit C.

A claimant under a lien recorded against property is required to commence enforcement within 90 days after recording the lien:

> (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.

Civil Code § 8460.

If the lien claimant does not commence enforcement within the statutory time period, the owner of the property that is subject to the lien may petition the Court to remove the lien from the property:

> (a) The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

Civil Code § 8480(a).

As a prerequisite to bringing an action to remove the lien, the property owner is required to show timely proof of service of notice of the Petition at least 15 days before the hearing. Code of Civil Procedure § 8486(b); 8488(a). Proof of service of notice of the Petition by regular mail on December 23, 2025, is attached to the Petition. However, the statute requires service to be made "in the same manner as service of summons, or by certified registered mail, return receipt requested." Code of Civil Procedure § 8486(b). Petitioner filed proof of service of notice of the Petition by personal service on January 28, 2026, which reflects personal service on January 25, 2026. This does not meet the requirements of the statute that service be effectuated at least 15 days prior to the hearing. Accordingly, the Court finds that there is good cause to continue the matter, as required by Code of Civil Procedure § 8486(a). This matter will be continued to allow the lien claimant an opportunity to file an opposition, if any. The Court notes that the statute also requires the hearing to be held, and the entry of any necessary orders on such Petition to be entered, within 60 days of filing of the Petition, which was January 5, 2026.

TENTATIVE RULING #3: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FEBRUARY 27, 2026, IN DEPARTMENT NINE. ANY OPPOSITION TO THE PETITION MUST BE FILED NO LATER THAN FEBRUARY 13, 2026, AND ANY REPLY TO ANY OPPOSITION MUST BE FILED NO LATER THAN FEBRUARY 20, 2026.

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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4.	**24CV1345**	**MIDLAND CREDIT MANAGEMENT, INC. vs. ISAACSON**
Set Aside Default		

Defendant requested the Court to set aside a default judgment. At the hearing held on December 31, 2026, the Court deemed the motion made pursuant to Code of Civil Procedure § 473.5 and stayed the enforcement of the judgment pending the outcome of this hearing.

Default judgment was entered on September 30, 2025. Defendant asserts that she never received notice of the judgment until her wages were garnished through her employer. The Declaration in support of the motion to set aside the default states that she was not served, that the name on the proof of service reflects a former name and an address where she has not lived for 15 years, and that she doesn't know what the claimed debt is for. She states: "I haven't lived in Elk Grove, I live in Shingle Springs and have a locked gate."

The proof of service of the Summons and Complaint states that personal service was effectuated on July 2, 2024, at an address in Shingle Springs, delivered to "JOY ISAACSON, with identity confirmed by subject nodding when named. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white female contact 35-45 years of age, 5'6"-5'8" tall and weighing 140-160 lbs."

Evidence Code § 647 establishes a presumption that service by a registered process server is valid:

> The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return.

Defendant has not submitted sufficient evidence to overcome this presumption. The Court finds that the service was not made in Elk Grove, but in Shingle Springs, where Defendant admits she resides. Plaintiff has filed a Declaration regarding the Verification of Debtor's Address, stating that on June 2, 2025, Plaintiff used a commercial address verification service, and subsequently mailed a first-class letter to that address, which was not returned. Defendant does not take issue with the physical description on the proof of service. The Court finds that service of the Summons and Complaint was valid.

TENTATIVE RULING #4: THE MOTION TO SET ASIDE THE DEFAULT JUDGMENT IS 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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5.	**25CV0292**	**AMERICAN EXPRESS NATIONAL BANK vs. KANAAN**
Stipulated Judgment		

The parties entered into a settlement agreement pursuant to Code of Civil Procedure § 664.6. Both parties signed the settlement agreement. Declaration of Janet Brown, dated January 2, 2026, ("Brown Declaration"), Exhibit A.

Code of Civil Procedure § 664.6(a) provides:

> If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.

Defendant has defaulted on the payment terms of the agreement. Plaintiff now requests the Court to enter judgment for the unpaid balance and for Plaintiff's costs based on the terms of the parties' agreement, which states:

> should Defendant(s) fail to make any payment on or before the stated due date, then Plaintiff shall immediately be free to pursue all available remedies including but not limited to Code of Civil Procedure section 664.6, and to file a Motion, Ex Parte Application, Declaration and Order and/or a new lawsuit to vacate any dismissal and to have judgment entered against Defendant for $33,229.76 plus Court costs, less any amounts received by Plaintiff from Defendant.

Brown Declaration, Exhibit A, para. 6.

Acknowledging a credit for payments made in the amount of $7,301.00, the total judgment requested is in the amount of $25,928.76, plus costs in the amount of $518.06, for a total amount of $26,446.82. The motion is unopposed.

TENTATIVE RULING #5: JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFF IN THE AMOUNT OF $26,446.82 IN ACCORDNCE WITH TO THE TERMS OF THE PARTIES' STIPULATION PURSUANT TO CODE OF CIVIL PROCEDURE § 664.6.

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6.	**25CV2340**	**JPMORGAN CHASE BANK N.A. vs. MAFTOON**
Compel Arbitration/ Stay Proceedings		

Defendant moves to compel arbitration and stay these proceedings based upon the terms contained in the Chase Cardmember Agreement that is in effect between the parties. The motion is unopposed.

The parties' agreement provides that either party can elect to refer disputes binding arbitration and that the agreement to arbitrate "is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq." Declaration of Fraidoon Maftoon, dated December 5, 2025, Exhibit A.

The applicable federal law provides that:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

Accordingly, the motion to compel arbitration is granted and the matter is stayed in this Court.

TENTATIVE RULING #6: THE MOTION TO COMPEL IS GRANTED. THE MATTER IS STAYED IN THIS COURT.

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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7.	**24CV0034**	**TAPIA v. TAPIA ET AL**
Attorney Withdrawal		

Counsel for the Defendants has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the scope of the retainer agreement is concluded and the client has not retained further services for the continuing proceedings. Further, the client's inability to effectively communicate or cooperate with counsel and material breach of the fee agreement by non-payment render continued representation unreasonably difficult.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff is not on file with the Court. However, the attorney's Declaration declares that the client has been served at their last known address by mail, and that the attorney confirmed that the address is current.

A Case Management Conference is currently scheduled on May 5, 2026. That date is not listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

The matter is continued to February 13, 2026, to allow counsel to submit a revised Order that includes the upcoming hearing date as required by California Rules of Court, Rule 3.1362(e), and to file proof of service.

TENTATIVE RULING #7: THE MATTER IS CONTINUED TO FEBRUARY 13, 2026, TO ALLOW COUNSEL AN OPPORTUNITY TO FILE A REVISED ORDER LISTING THE UPCOMING HEARING DATE AND A PROOF OF SERVICE.

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8.	**25CV3418**	**IN THE MATTER OF CYNTHIA CECILIA WALTON**
Compromise Minor's Claim		

This is a Petition to compromise a minor's claim. Petitioner is the minor's grandmother, who was awarded guardianship on February 22, 2023, in the State of Indiana. The Petition states the minor's parent was killed in an auto accident in 2022. 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 minor's claim against all defendants in the gross amount of $7,500.

The Petition states the minor was not involved in the accident and did not incur any medical expenses or sustain any temporary or permanent injuries.

The minor's attorney requests attorney's fees in the amount of $1,875, which represents 25% of the gross settlement amount. 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).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

With respect to the $5,625 due to the minor, the Petition requests that they be deposited into an insured account with Chase Bank, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The Court has waived the Local Rule 7.10.12.D requirement that the minor be present at the hearing.

TENTATIVE RULING #8: THE PETITION IS APPROVED.

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.

9.	24CV0053	NICHOLAS JAMES LEE GRAY vs. ZBS LAW LLP
Demurrer		

This is a dispute surrounding the foreclosure of Plaintiff's residential real property following Plaintif's default on the loan. Defendants demur to Plaintiff's Second Amended Complaint ("SAC"). Following is a chronology of undisputed events:

In May 19, 2015, Plaintiff obtained a mortgage loan, evidenced by a promissory note and secured by a Deed of Trust (the "2015 Deed of Trust"). SAC, p.2. The beneficiary under the 2015 Deed of Trust was Mortgage Electronic Registration Systems, Inc. ("MERS"). Defendants' Request for Judicial Notice ("DRJN"), Exhibit A; Plaintiff's Request for Judicial Notice ("PRJN"), Exhibit A. The SAC alleges that in 2016, Finance America, a successor to the original lender, informed Plaintiff that an audit of the 2015 Deed of Trust led to the discovery of erroneous verbiage in that document. SAC, p. 2-3, Exhibit A. Finance of America therefore requested that Plaintiff re-execute a corrected Deed of Trust before a notary public. Id. On March 23, 2016, Plaintiff signed the corrected Deed of Trust (the "2016 Deed of Trust") before a notary public, and it was recorded on April 16, 2016. DRJN, Exhibit B; PRJN, Exhibit B. The beneficiary under the 2016 Deed of Trust remained unchanged from the 2015 Deed of Trust. Id. Subsequently, a Full Reconveyance of the 2015 Deed of Trust was recorded on July 12, 2016. DRJN, Exhibit C; PRJN, Exhibit C.

Defendants note that the reconveyance document refers to the 2015 Deed of Trust by date and Instrument Number in order to make clear that the Full Reconveyance relates to the 2015 Deed of Trust rather than the 2016 Deed of Trust, such that the 2015 Deed of Trust had been superceded and the 2016 Deed of Trust was now the only operative instrument documenting Plaintiff's mortgage loan. DRJN, Exhibit C; PRJN, Exhibit C.

On April 14, 2020, an Assignment of Deed of Trust was recorded, transferring the beneficial interest under the 2016 Deed of Trust from MERS to Defendant Shellpoint. DRJN, Exhibit D; PRJN, Exhibit D. Defendants again highlight the fact that this document specifically identifies the 2016 Deed of Trust by recording date and Instrument Number. Id. On February 9, 2023, a Substitution of Trustee was recorded, substituting Lawyers Title Company with Defendant ZBS Law, LLP ("ZBS"). DRJN, Exhibit E.

A Notice of Default was recorded by ZBS in February 28, 2023, reflecting a past due amount of $10,925.13 and a default on payments that began with the September 1, 2022 monthly installment. DRJN, Exhibit F. Defendants again point out that this document specifically identifies the 2016 Deed of Trust by recording date and Instrument Number. Id.

On July 28, 2023, ZBS recorded a Notice of Trustee's Sale against the Property. DRJN, Exhibit G. This document identifies the 2016 Deed of Trust by recording date and Instrument Number. Id.

On January 2, 2024, the Property sold at a publicly held trustee's sale to Bluebird Company for $211,747.51. On January 22, 2024, the transfer of title to Bluebird in a Trustee's Deed Upon Sale, identifying the 2016 Deed of Trust by recording date and Instrument Number, was recorded. DRJN, Exhibit H.

Requests for Judicial Notice

Both parties request the court to take judicial notice of documents that are recorded with El Dorado County. Plaintiff additionally requests the Court to take judicial notice of the results of an internet search of an unspecified URL, conducted on an unspecified date. PRJN Exhibit E.

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 collectively 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. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Evidence Code § 452(c) allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States."

Defendants' request for judicial notice is granted; Plaintiff's request for judicial notice is granted with the exception of Exhibit E, which cannot be said to come within "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Evidence Code § 452(h).

Standard of Review

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) 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, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

The Second Amended Complaint ("SAC") alleges 1) breach of fiduciary duty, 2) wrongful foreclosure and 3) fraudulent transfer. Plaintiff alleges that the loan and the corresponding lien on the property was extinguished by the full reconveyance in 2016, and that the subsequent assignment was therefor invalid. SAC p. 3. The reason the reconveyance was ineffective, according to Plaintiff, is that the beneficiary under the 2015 and 2016 Deeds of Trust was Mortgage Electronic Registration Systems, Inc. ("MERS"), and that MERS "was inactive since May 2015, yet purportedly assigned the Deed in 2020, lacking authority, making the assignment invalid and unauthorized." SAC, page 3. Plaintiff Request for Judicial Notice, Exhibit E, purports to establish this inactive status; however, the document for which judicial notice is requested does not show a URL or search date, it is not an official record of any public agency and it is not a proper subject of judicial notice under any applicable statute. Further, it appears to reference an entity called "Ditech Financial", which is a stranger to this litigation. On the other hand, Defendant's Request for Judicial Notice, Exhibit I, consists of a filing on behalf of MERS dated July 21, 2010, designating the corporation's agent for service of process with the California Secretary of State's Office that shows the corporation in good standing in its home state of incorporation as of 2010. Defendant's Request for Judicial Notice, Exhibit J consists of another filing on behalf of MERS dated April 18, 2025, with the California Secretary of State's Office listing its corporate officers. Although those filings do not relate to the relevant period around 2015-206, there is no evidence on the record that even suggests that MERS was not a viable entity at the time of the full reconveyance or assignment of Plaintiff's mortgage note.

The SAC's further alleges "Defendants' failure to act in good faith, reliance on procedural technicalities to avoid responsibility, and failure to comply with KYC (Know Your Cusomer), AML (Anti-Money Laundering), and standard contractual obligations, . . ." SAC, page 2. The SAC continues: "Defendants filed fiduciary duties, mismanaged payments, and initiated foreclosure without proper investigation." SAC, page 4. These are legal conclusions, not allegations of fact. In support of the SAC's claims, Plaintiff cited a list of statutes, again, without specifying any factual allegations as to how those statutes apply to the case. SAC, page 5. There are simply no factual allegations in the SAC that could support any of the causes of action for breach of fiduciary duty (as there is no fiduciary duty or the basis for one alleged), wrongful foreclosure (as there are no factual allegations of wrongful conduct), or fraudulent transfer (as there are no factual allegations of fraudulent conduct).

Defendants' demurrer must be sustained.

TENTATIVE RULING #9: DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE OF EXHIBITS A-D IS GRANTED; PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE OF REQUEST FOR JUDICIAL NOTICE, EXHIBIT E IS DENIED. DEFENDANTS' DEMURRER IS SUSTAINED WITH LEAVE TO AMEND WITHIN TEN DAYS OF SERVICE OF THIS 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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10.	24CV1621	WATERMARK ON THE LAKE HOA v. BRADLEY
Summary Judgment/Summary Adjudication		

Plaintiff has filed this motion for summary judgment. The dispute relates to Defendant and her husband's work on their residential property within the Plaintiff's Homeowners Association ("HOA").

Request for Judicial Notice

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 collectively 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. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Plaintiff has requested that the Court take judicial notice of recorded CC&Rs, the grant deed to Defendant for Defendant's property within the HOA. These items come within the scope of Evidence Code § 452(c), which allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States," as well as Evidence Code § 452(d), which permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States."

Accordingly, the request for judicial notice is granted.

Motion for Summary Judgment

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

The Complaint is for Breach of CC&Rs, Nuisance and for Declaratory Relief. Plaintiff has filed a Separate Statement of Undisputed Material Facts ("UMF"). Some of these facts are deemed admitted The following facts are undisputed:

1. Defendant owns property within Plaintiff's HOA, Watermark on the Lake, and is subject to the terms and conditions of the Covenants, Conditions and Restrictions of ("CC&Rs") of the HOA. UMF Nos. 1-2; Declaration of Tom Brooks, dated October 21, 2025 ("Brooks Declaration") paras. 2-3; Request for Judicial Notice ("RJN"), Exhibit 1.
2. The HOA's CC&Rs required prior approval of the HOA's Architectural Committee before undertaking improvements to property within the HOA. "Improvements" include the alteration of any exterior feature on the lot. UMF Nos. 3-4, 17-18; RJN, Exhibit 2.
3. The CC&Rs also require prior approval of the Architectural Committee for grading plans. UMF Nos. 5; RJN, Exhibit 2.
4. Defendant submitted an incomplete application for improvements to build a home and for grading, which were not approved by the Archtectural Committee of the HOA. UMF Nos. 6; Brooks Declaration, para. 4 and Exhibit 1.
5. Without the HOA's approval Defendant performed grading and commenced improvements including stockpiling construction materials and heavy equipment. UMF No. 7; Brooks Declaration, para. 5.
6. Although Plaintiff issued cease-and-desist letters, Defendant continued to make improvements to the property. UMF No. 8; Brooks Declaration, para. 6.
7. Plaintiff commenced disciplinary hearings pursuant to Civil Code § 5855 and ultimately fined Defendant $19,000. UMF No. 9; Brooks Declaration, para. 7.
8. Defendant has not paid the fines imposed by HOA for unauthorized alterations to the property. UMF No. 10; Brook Declaration, para. 8 and Exhibit 2.
9. Plaintiff served a Request for Admissions ("RFAs") on Defendant, and when Defendant didn't respond Plaintiff moved to have the RFAs deemed admitted and the motion was granted. UMF. No. 12-14; Declaration of Michael Thomas, dated October 13, 2025 ("Thomas Declaration"), Exhibit A; RJN, Exhibit 4.
10. The facts deemed admitted from the RFAs are as follows (UMF No. 12; RJN, Exhibit 4):
    a. Defendant's property is subject to the CC&Rs;
    b. Defendant made alterations to the property;
    c. Defendant's alterations were not approved by the HOA's Architectural Committee;
    d. The HOA has levied fines in the amount of $19,000;
    e. Defendant has not paid the fines.

As to the Cause of Action for Breach of the CC&Rs, Plaintiff has established that Defendants' property was subject to the CC&Rs, that the CC&Rs required prior approval for improvement of the property, that the required approvals were not obtained, that Defendant

did commence improvements of the property, that Plaintiff exhausted its administrative remedies under the CC&Rs by levying fines for the violation, and that defendant has not paid those fines.

As to the Cause of Action for Nuisance, the CC&Rs state that a violation of the CC&Rs constitutes a nuisance. RJN, Exhibit4, Section 13.16. A violation of the CC&Rs having been established by the first Cause of Action, there is no material issue of fact that would prevent summary adjudication of this issue.

Finally, as to the Cause of Action for Declaratory Relief, the Complaint requests "a declaratory judgment that Defendant cannot conduct grading and/or excavation without approved plans." Complaint, para. 25. In essence, in addition to the determination under the first and second causes of action as to past events, the Complaint requests a determination of the parties' rights going forward. In order to grant declaratory relief pursuant to Code of Civil Procedure § 1060, Court must find that this matter is a proper subject for declaratory relief and that there is an actual controversy between the parties.

> A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties and requests that the rights and duties of the parties be adjudged by the court.
>
> * * *
>
> In assessing whether declaratory relief is available, a court determines whether "a probable future dispute over legal rights between parties is sufficiently ripe to represent an 'actual controversy' within the meaning of the statute authorizing declaratory relief (Code Civ. Proc., § 1060), as opposed to purely hypothetical concerns ...." (*Steinberg v. Chiang* (2014) 223 Cal.App.4th 338, 343, 167 Cal.Rptr.3d 249.)

Monterey Coastkeeper v. Cent. Coast Reg'l Water Quality Control Bd., 76 Cal. App. 5th 1, 13 (2022).

The Court finds that the matter is a proper subject for declaratory relief and that an actual controversy exists as between the parties.

TENTATIVE RULING #10: PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT 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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11.	22CV1608	CRAMER vs. NORTON
Demurrer / Motion to Strike		

Plaintiff has filed this action regarding a driveway and culvert that he alleges encroaches from Defendant's property onto his property. Demurrers to Plaintiff's First and Third Amended Complaint were sustained with leave to amend; there was no Second Amended Complaint and the Fourth Amended Complaint was stricken by the Court because it was filed before the demurrer to the Third Amended Complaint was heard. A demurrer to the Fifth Amended Complaint ("5AC") as to Defendant First American Title was sustained without leave to amend following a hearing on January 23, 2026.

The 5AC alleges 1) willful trespass and 2) negligent trespass. Defendant Norton ("Defendant") files this most recent demurrer to the 5AC on the grounds that the action is time-barred by Code of Civil Procedure § 338, and that the 5AC fails as uncertain, in that it is ambiguous and unintelligible, citing Code of Civil Procedure § 430.10(f). Defendant also seeks to strike certain references within the 5AC that Defendant claims is improper material for the contents of a Complaint. Defendant has provided evidence of attempts to meet and confer with Plaintiff as part of its pleadings in support of this motion. Declaration of Charles Karlin, dated September 29, 2025.

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, 223 Cal.Rptr. 806.) 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, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

The 5AC alleges that the encroaching structure, a driveway and culvert, was built in 1984-1985. Plaintiff alleges that he purchased the property in 2012. The original Complaint was filed in 2022.

Defendant cites authority that this action is time-barred because there is a three-year statute of limitations. Bertram v. Orlando, 102 Cal.App.2d 506, 509 (1951) held that an encroachment of a structure intended to be permanent is a permanent trespass, and as such, the statute of limitations is three years under Code of Civil Procedure § 338(b). Baker v. Burbank-Glendale-Pasadena Airport Authority (1985) 39 Cal.3d 862, 868-869, held that a nuisance that

involves solid structures or a permanent nuisance "by one act a permanent injury is done" are similarly limited to the three-year statute of limitations.

Plaintiff opposes the demurrer because he alleges that the previous owner should have disclosed the encroachment when the title to the property changed hands, and/or that the title company was guilty of concealing the encroachment. The case law does not support this view, holding that date from which the statute of limitations is measured is the construction of the structure:

> In an action involving tortious injury to property, the injury is considered to be to the property itself rather than to the property owner, and thus the running of the statute of limitations against a claim bars the owner and all subsequent owners of the property. (*Wilshire Westwood Associates v. Atlantic Richfield Co*. (1993) 20 Cal.App.4th 732, 739-740 [24 Cal.Rptr.2d 562]; *CAMSI IV v. Hunter Technology Corp*. (1991) 230 Cal.App.3d 1525, 1534-1535 [282 Cal.Rptr. 80].) In other words, the statute of limitations does not commence to run anew every time the ownership of the property changes hands. (*Ibid.*) The injury to the property of which Beck complains occurred more than 40 years before this action was commenced and thus this action is time-barred unless there is some cause for avoidance of the statute of limitations.

Beck Dev. Co. v. S. Pac. Transportation Co., 44 Cal. App. 4th 1160, 1216 (1996).

The Court finds this action is barred by the statue of limitations set forth in Code of Civil Procedure § 338. Accordingly, there is no need to rule on the motion to strike portions of the 5AC.

TENTATIVE RULING #11: DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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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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.