April 24, 2026
Dept. 9
Tentative Rulings

1.	**22CV0884**	**SANCHEZ v. GENERAL MOTORS, LLC**
Motion to Tax Costs		

In its June 20, 2025, tentative ruling, the Court informed Defendant that its Notice did not comply with Local Rule 7.10.05 and that another violation would be grounds for sanctions pursuant to Local Rule 7.12.13. With its current Motion, Defendant's Notice still does not comply with Local Rules. Therefore, the Motion is denied.

TENTATIVE RULING #1: MOTION 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).

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.

2.	**25CV1073**	**US LBM OPERATING CO. v. AM DEVELOPMENT et al**
Motion to be Relieved		

Counsel for AM Development, Inc. and Adam Murray move the Court for an order 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 clients have failed to cooperate with counsel regarding outstanding balances for legal fees and costs.

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 was filed on April 1, 2026.

A Settlement Conference is currently scheduled for July 15, 2026, Issues Conference is set for September 4, 2026, Trial Conference is set for September 11, 2026, and Trial is set for September 15, 2026. All dates are listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #2: ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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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3.	**25CV0901**	**KIMBRIEL v. CISCOE et al**
Motion to be Relieved		

Counsel for the Defendant Chelsea Ciscoe 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 withdrawal is requested because of the client's inability to effectively communicate or cooperate with counsel and client's material breach of the fee agreement due to non-payment after notice.

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 was filed on March 26, 2026.

There is no proposed Order on file with the Court. The Order is required to list upcoming hearing dates, which include a Case Management Conference scheduled on May 12, 2024, and Motion Hearing re: Expunging a Lis Pendens on May 8, 2026. These hearing dates must be listed in the proposed Order pursuant to California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #3: ABSENT OBJECTION, THE MOTION IS GRANTED, CONTINGENT ON COUNSEL'S FILING OF A PROPOSED ORDER THAT MEETS THE REQUIREMENTS OF CALIFORNIA RULES OF COURT, RULE 3.1362(E). COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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.	25CV0172	AUSTIN et al v. HANSEN et al
Compel Discovery Responses/Deem Requests for Admission Admitted/Substitution of Plaintiff		

This is a dispute over an easement ("Forest Brook Lane") that crosses "Lot 165, the Common Area," a 26-acre lot initially owned by the Western Grizzly Park Owners Association ("Grizzly Park") pursuant to a deed executed in 1981. Complaint, Exhibit E. Both Plaintiffs and Defendants claim rights to this easement. The Complaint alleges that Defendants have "asserted physical control" over the easement in violation of Plaintiffs' rights, and asserts claims for quiet title, nuisance, and declaratory and injunctive relief.

Motion to Compel Further Discovery Responses

Defendants served the first set of discovery requests on December 12, 2025, and responses were received on January 15, 2026. Defendants have requested the Court to compel further responses to specific discovery requests listed below.

Requests for Admissions

Defendants argue that the following responses effectively deny the Request for Admission while simultaneously admitting underlying facts;

RFA No. 7: Admit that you have never performed maintenance or repairs on Forest Brook Lane pursuant to a recorded agreement.

Response: DENY that I have performed maintenance or repairs on Forest Brook Lane, but ADMIT that the maintenance and repairs I completed on Forest Brook Lane were not pursuant to a recorded agreement.

RFA No. 8: Admit that you have never paid road maintenance costs pursuant to a recorded Road Maintenance Agreement governing Forest Brook Lane.

Response: DENY that I have paid for road maintenance on Forest Brook Lane, but ADMIT that I have not paid for maintenance on driveway improvements pursuant to a Road Maintenance Agreement.

RFA No. 18: Admit that you do not possess written authorization from all three owners of Forest Brook Lane permitting your use of the road.

Response: ADMIT that I do not possess written authorization from the three individuals mentioned, but DENY that they are the owners of the portion of Forest Brook Lane that runs through Lot 165 and that I need to possess their written authorization to use the road.

RFA No. 20: Admit that no owner of Forest Brook Lane is named as a plaintiff in this case.

Response: ADMIT that no other easement holder of Forest Brook Lane is named as a plaintiff in this case, but DENY that the Defendants is [sic] and owner of Forest Brook Lane.

RFA No. 21: Admit that you did not serve all owners of Forest Brook Lane with the Complaint in this action.

Response: ADMIT that I did not serve all easement holders of Forest Brook Lane with the Complaint in this action, but DENY that I served any owners of the portion of Forest Brook Lane in question.

A Code-complaint response to Requests for Admissions requires answers "as complete and straightforward as the information reasonably available to the responding party permits." Code of Civil Procedure § 2033.220(a). Responses are required to "Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party [and] [d]eny so much of the matter involved in the request as is untrue." Code of Civil Procedure § 2033.220(b).

As to RFA Nos. 7 and 8, the Court agrees that the responses are nonsensical and fail to answer the question. As to RFA Nos. 18, 20, and 21, the Court finds that the Plaintiff has answered the underlying factual question even though it is worded in a way to accept Plaintiff's legal positions and to deny Defendants' legal positions. Defendant could have worded the questions in a way to avoid complicating the answers with legal conclusions, but the underlying factual questions have been answered.

Defendants argue that the following Requests for Admission responses provide narrative argument instead of a direct admission or denial.

RFA No. 9 & 10: Admit that your property taxes/property tax assessments do not show an assessment for/do not list you as owning any portion of Lot 165/any portion of Lot 165 or any roadway interest associated with Forest Brook Lane.

Response: Property taxes are assessed along with common area of Unit 8. There is no line item assessment for the common area property, nor is there a separate value assigned to the common area of Unit 8.

RFA No. 11: Admit that no court has issued an order adjudicating that you possess a legal right to use Forest Brook Lane.

Response: Deny the court in this case has ruled a high likelihood of victory in this matter pursuant to the injunction that was awarded to Responding Party.

RFA No. 28 & 29: Admit that the parcels on Forest Brook Lane have never granted you written permission to alter, control or regulate use of Forest Brook Lane./Admit that you do not possess any written agreement authorizing you to regulate traffic or access on Forest Brook Lane.

Response: Deny. Responding Party has never engaged in alleged behavior. Defendants however have engaged in said behavior and is the cause of this lawsuit.

The Court agrees that RFAs Nos. 9, 10, 11, 28 and 29 fail to answer the question stated in the Request for Admission.

Requests for Production of Documents

As to the Requests for Production of documents ("RFP"), Defendants argue that the responses fail to clearly state whether responsive documents exist, redact documents without a valid privilege or a privilege log.

"A party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:" (1) a statement that the party will comply, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Code of Civil Procedure §2031.210.

RFP No. 2: This RFP requests any documents that identify Plaintiffs' parcel as a grantee, beneficiary or holder of any interest arising from the 1981 deed from which the Forest Brook Lane was created. Plaintiffs response calls the inquiry vague and responds as if the RFP requested any deed in which Plaintiff is named and denies that there are any documents responsive to the request.

The Court finds this response to be non-responsive. Defendant is very clearly requesting any documentation of the property ownership claims that underlie Plaintiff's lawsuit against them.

RFP No. 3: This RFP requests any documents that establish any ownership interest held by the local water district. Plaintiff's response denies any such documents exist. This is an adequate response.

RFP No. 4: This requests "all Road Maintenance Agreements, contracts, invoices, receipts, canceled checks or other documents evidencing payment for maintenance or repairs of Forest Brook Lane" by Plaintiff. Plaintiff's response was an invoice related to Plaintiff's private driveway on Pine Ridge Drive, not Forest Brook lane. This is not responsive to the request.

RFP No. 7: "Produce all corporate records, filings, membership lists or officer rosters identifying [Plaintiff] as an owner, member, or officer of the Western Grizzly Parks Owners Association." Plaintiff's response is nonsensical, and the documents referenced in the response relate to the Grizzly Park organization but are not responsive to the request.

RFP No. 9: "Produce all documents that you have recorded, or contend should have been recorded, in the Official Records of El Dorado County that purport to grant, evidence, or establish any easement, right of way or access rights over Forest Brook Lane.: Plaintiff responds as to unrecorded documents, but does not respond as to any recorded documents.

RFP No. 10: Plaintiffs' response is that no document exists that are responsive to the request, which is an adequate response.

RFP No. 11: Apart from avoiding Defendants' characterization of "owners of Forest Brook Lane" by interpreting them as "beneficiaries of the deeded easement", the response states that no such document exists, which is an adequate response.

RFP No. 12: The form of the question in RFP No. 12 is such that Plaintiff's objection that RFP No. 12 is vague and ambiguous is sustained.

RFP No. 13: Plaintiff indicated that no responsive documents exist, which is an adequate response.

RFP No. 18 & 22: These RFPs request copies of certain correspondence with various neighbors, to which Plaintiff asserts privileges by stating that the information requested is "confidential, proprietary or protected by privacy rights." Some materials were produced but they were redacted; Defendant notes that the materials that were produced reference other communications that were not produced.

> The right to privacy protects the " 'individual's reasonable expectation of privacy against a serious invasion.' " (*Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 307, 125 Cal.Rptr.3d 169 (*Los Angeles Gay & Lesbian Center*), quoting *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370, 53 Cal.Rptr.3d 513, 150 P.3d 198.) "If the invasion of privacy is serious, then the court must balance the privacy interest at stake against other competing interests, which include the interest of the requesting party, fairness to litigants in conducting the litigation, and the consequences of granting or restricting access to the information." (*Ibid.*)

Snibbe v. Superior Ct., 224 Cal. App. 4th 184, 194 (2014).

> The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a

> threatened intrusion that is serious. (*Id.* at pp. 35–37, 26 Cal.Rptr.2d 834, 865 P.2d 633.) The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. (*Id.* at pp. 37–40, 26 Cal.Rptr.2d 834, 865 P.2d 633.)

Williams v. Superior Ct., 3 Cal. 5th 531, 552 (2017).

Plaintiff acknowledges this legal standard in his Opposition to the motion, but has not articulated any legally protected privacy interest that prevents production of unredacted documents.

Code of Civil Procedure § 2031.240 provides the requirements for asserting a privilege in a document production request:

> (b) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following:
>
> (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made.
>
> (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. . . .

The response to this RFP does not meet the statutory requirements and is inadequate.

RFP No. 21: Plaintiff indicated that no responsive documents exist, which, if true, is an adequate response.

Substitution of Plaintiff

Plaintiff Donald Austin seeks to have himself substituted in as Plaintiff in place of Sheila Austin, who is deceased.

Defendant's Opposition notes that the proof of service only indicates service to Greg Hansen, not to Janelle Hansen. However, the notice was delivered to the mailing address shared by both Defendants, who both filed a timely opposition to the motion.

` Defendants further argue that the motion fails to meet the requirements of Code of Civil Procedure § 377.31-377.32, in that Plaintiff has not submitted evidence that he is the successor

in interest to Sheila Austin, other than his own Declaration, dated and filed on March 13, 2026. The applicable statute requires certain content be included in the Declaration, and Plaintiff's Declaration meets these requirements. The statute does not require Plaintiff to file documentary evidence of Austin Family Trust or his appointment as trustee.

Finally, Defendants argue that neither Plaintiff has standing to maintain the lawsuit in the absence of any property rights that would support their lawsuit. This is an argument that goes to the merits of the case, and does not prevent the substitution of Donald Austin as the successor in interest to Sheila Austin as a procedural matter.

Attorney's Fees

Code of Civil Procedure § 2033.290(d) provides: "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Code of Civil Procedure § 2023.010 defines "misuse of the discovery process" to include "making, without substantial justification, an unmeritorious objection to discovery", such as in this case, asserting a right to privacy without to withhold requested information without providing any justification"; "making an evasive response to discovery" and "opposing, unsuccessfully and without substantial justification, a motion to compel . . . discovery."

Code of Civil Procedure § 2023.030 authorizes the Court to impose a monetary sanction against parties engaged in misuse of the discovery process, to pay the reasonable expenses including attorney's fees, incurred by anyone as a result of that conduct.

The Court finds that evasive and non-responsive answers to Defendants' discovery requests and the assertion of unsubstantiated privileges comes within the definition of "misuse of the discovery process" and awards attorneys' fees and costs to Defendants according to proof of the costs of bringing this motion to compel further responses.

TENTATIVE RULING #4:

DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES IS GRANTED AS TO REQUESTS FOR ADMISSIONS NOS. 7, 8, 9, 10, 11, 28, AND 29, AND AS TO REQUESTS FOR PRODUCTION NOS. 2, 4, 7, 9, 18 AND 22.

DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES IS DENIED AS TO REQUESTS FOR ADMISSIONS NOS. 18, 20 AND 21 AND REQUESTS FOR PRODUCTION NOS. 3, 10, 11, 12 AND 21.

ATTORNEYS' FEES AND COSTS ARE AWARDED TO DEFENDANTS FOR THE COSTS OF BRINGING THE MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY, ACCORDING TO PROOF.

THE MOTION FOR SUBSTITUTION OF THE PLAINTIFF 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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5.	**25CV3113**	**WILKINSON et al v. PHH MORTGAGE CO. et al**
Demurrer		

This demurrer was filed on December 19, 2025, and was continued from its original March 13, 2026, hearing date. No opposition has been filed, and the demurring parties have filed a Declaration indicating that the Plaintiff did not respond to meet and confer efforts.

The demurring Defendants are financial institutions associated with a 1999 loan to a prior owner of the property on a residential real property that was the subject of a foreclosure sale. Plaintiff's Complaint asserts that the foreclosure sale was accomplished without judicial order, without proper venue, and without service of process. Complaint, para. 5.9. Specifically, underlying the causes of action in the Complaint are Plaintiffs' assertions that Defendants lacked standing to enforce the terms of the loan and that the loan itself was void *ab initio*.

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.

Evidence Code § 452 lists matters of which the court may take judicial notice. 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." Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States."

Accordingly, Defendants' Requests for Judicial Notice of materials that fall within the categories covered by Evidence Code § 452(c) and (d) are granted.

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).

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 877 (1992).

Factual Background

The 1999 loan at issue has been the subject of a chain of assignments, and Defendant Bank of New York Mellon Trust Company ("BNYM") is the current assignee-beneficiary of record. RJN No. 52, Exhibit D. Defendant PHH Mortgage Company ("PHH") is the current servicer of the loan. Id., Exhibit C. Defendant Western Progressive, LLC ("WP") is the substituted trustee of record, RJN No. 51.

According to the demurrer, the original borrower ("Borrower") defaulted several times on the loan between 2000 and 2016. Request for Judicial Notice ("RJN") Nos. 2-17. In the interim, the Borrower filed for bankruptcy in 2012, and in the course of those proceedings conceded that the loan was an undisputed secured interest in the real property. RJN No. 22. Plaintiff also filed for bankruptcy in 2014 and also conceded that the loan is an undisputed secured interest in the real property that was listed as an asset of Plaintiff. RJN No. 23.

The Borrower defaulted again in 2017, leading to a scheduled Trustee Sale on March 13, 2018. Borrower and Plaintiff, who are co-owners of the property, filed a lawsuit IN El Dorado County Superior Court (PC20180114, RJN No. 25), requesting an injunction, which was denied and the matter was dismissed with prejudice when the parties negotiated a loan modification in settlement. RJN No. 28. Thereupon the Borrower and Plaintiff filed a petition for Chapter 13 bankruptcy. RJN No. 29. Borrower passed away in 2020. Complaint, para. 4.5.

Another default occurred in 2021, and a Trustee Sale was scheduled for May 23, 2024. RJN No. 31. In response, Plaintiff filed both a federal lawsuit ("2024 Federal Action") and another Chapter 13 bankruptcy action (RJN No. 32). The trustee sale proceeded on September 26, 2024 (RJN No. 33). Defendant WP erroneously recorded the Trustee's Deed Upon Sale during the bankruptcy court's stay (RJN No. 40) and for that reason that Deed was rescinded on May 7, 2025 (RJN No. 41).

Following these events Plaintiff filed an "Adversary Complaint" in bankruptcy court ("2025 Federal Action"), alleging violation of the bankruptcy stay, as well as causes of action challenging the underlying loan (for lack of consideration and lack of statutory authority to make a private residential loan) and alleging violations of the Fair Debt Collection Practices Act (because the underlying debt was void and unconscionable). RJN No. 42. All of these claims were dismissed by the bankruptcy court in the 2025 Federal Action except the claim related to the violation of the automatic stay. This action is still pending as to that single claim. As to the

Plaintiffs' challenges to the underlying loan transactions (lack of consideration) and the Fair Debt Collection Practices Act, these claims were all dismissed with prejudice. RJN No. 43.

The 2024 Federal Action included causes of action based on lack of standing to foreclose, fraud in the loan origination and breach of contract. In response to Defendants' motion the court dismissed the matter on May 1, 2025, based on Plaintiff's lack of standing to challenge the loan origination or to maintain an action for wrongful foreclosure. RJN No. 37.

Analysis

Defendants demur to the First Cause of action in the Complaint (wrongful foreclosure) on the grounds that Plaintiffs lack standing to challenge the contract comprising the mortgage or the foreclosure because he was not a party to the loan agreement, a matter which was previously determined in prior judicial proceedings and is now barred by *res judicata*:

> Res judicata bars a subsequent claim when "1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding."
>
> The doctrine of collateral estoppel or issue preclusion is a secondary form of res judicata… It prevents a party who had a full and fair opportunity to litigate on a particular issue in a prior proceeding from relitigating it in a subsequent proceeding."

Colombo v. Kinkle, Rodiger & Spriggs (2019) 35 Cal.App.5th 407, 416.

> "Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. [Citation.] Res judicata applies if the decision in the prior proceeding is final and on the merits and the present proceeding is on the same cause of action as the prior proceeding. [Citation.] Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. [Citation.]" (*Citizens for Open Government, supra,* 205 Cal.App.4th at p. 324, 140 Cal.Rptr.3d 459.)
>
> "Causes of action are considered the same if based on the same primary right. [Citation.] A claim in the present proceeding is based on the same primary right if based on the same conditions and facts in existence when the original action was filed. [Citation.] Even if petitioner's challenge is not based on the same conditions and facts, those different conditions and facts must be 'material.' [Citation.]" (*Citizens for Open Government, supra,* 205 Cal.App.4th at p. 325, 140 Cal.Rptr.3d 459.)

Ione Valley Land, Air, & Water Def. All., LLC v. Cnty. of Amador, 33 Cal. App. 5th 165, 171 (2019).

The Court finds that Plaintiffs' claims articulated in the Complaint are the same claims that were asserted by this Plaintiff against the same parties or parties in privity with those partes, regarding the same loan and foreclosure that was at issue in the 2024 Federal Action and the 2025 Federal Action. Plaintiffs' claims were considered in those proceedings on their merits and were rejected.

The U.S. District Court's Findings and Recommendations in 2:24-cv-1416, dated February 19, 2025, considered Plaintiff's standing at length, and concluded that, as a stranger to the loan, Plaintiff lacked standing to contest the to contest the validity of the loan or the foreclosure proceedings. RJN No. 37. Based on those Findings and Recommendations the Court dismissed Plaintiff's claims on those issues with prejudice. RJN No. 43.

In a November 19, 2025, *Memorandum Regarding Objection to Proof of Claim No. 1, Motion to Confirm Plan, ECF No. 187, and Trustee's Motion to Dismiss Case* (Complaint, Exhibit A) the bankruptcy court agreed to dismiss BNYM's claim in bankruptcy without prejudice so that foreclosure could proceed, and included in that Memorandum the finding that "the debtor has attempted to . . . litigate the validity of the deed of trust. Twice. And in each instance, he was found to lack standing. Findings and Recommendations 2:12, *Wilkinson v. PHH Mortgage Corporation*, No. 2:24-cv-1416 (E.D. Cal. February 20, 2025), adopted by Order, ECF No. 31; Mem., *Wilkinson v. PHH Mortgage Corporation,* No. 25-2061 (Bankr. E.D. Cal.2025), ECF No. 126."

In addition to the issue of Plaintiffs' standing to contest the validity of the loan and of the foreclosure, Defendants also demur to Plaintiffs' Second and Third causes of action asserting constitutional violations on the grounds that Defendants are not state actors, and as such, are not subject to claims under 42 U.S.C. 1983 because they are not acting "under color of state law." "California's nonjudicial foreclosure procedure does not constitute state action and is therefore immune from the procedural due process requirements of the federal Constitution." *Garfinkle v. Superior Court,* 21 Cal.3d 268, 281, (1978)." Altman v. PNC Mortg., 850 F. Supp. 2d 1057, 1080 (E.D. Cal. 2012).

As to the Fourth cause of action for Quiet Title, Defendants assert that the cause of action fails as a matter of law because Plaintiff did not tender or offer to tender the outstanding loan balance as required to maintain a quiet title action with respect to a mortgaged property:

> To quiet title to the Property encumbered by a mortgage loan, the plaintiff must allege that he/she tendered the amount of outstanding debt to the lender. *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 8; *Sipe v. McKenna* (1948) 88 Cal.App.2d 100,1 1006. The rules governing tender "are strict and are strictly applied." *Nguyen*,

> supra, at 439. Nothing short of the full amount due is sufficient to constitute a valid tender. *Gaffney v. Downey Savings & Loan Assn*. (1988) 200 Cal.App.3d 1154, 1165. Tender must be (1) valid, (2) made in good faith, (3) unconditional, (4) made with intent to extinguish the obligation, and the party making the tender must have had the ability to perform. Civ. Code §§1485, 1486, 1494.

The Complaint does not allege that Plaintiff tendered or offered to tender the loan balance.

Plaintiffs' Fifth and Sixth causes of action relate to the Trustees Deed of Sale that issued in violation of the bankruptcy stay, citing Civil Code § 3412, which provides:

> A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

The instrument in question has already been rescinded, returning "the priority and existence of all title and lien holders to the status quo-ante as existed prior to the trustee's sale." RJN No. 41. Accordingly, Civil Code § 3412 has no application to the current status of the title to the real property and the Fifth and Sixth causes of action of the Complaint are moot.

Finally, Plaintiff's Seventh cause of action for violation of the Fair Debt Collection Practices Act because Plaintiff does not qualify as a debtor under that statute, and accordingly lacks standing to assert any rights as a debtor under that statute. Further, Defendants note that non-judicial foreclosure, which involves selling the security for the loan, not collecting money from the borrower, does not come within the Fair Debt Collection Practices Act. ("[T]he 'activity of foreclosing on [a] property pursuant to a deed of trust is not the collection of a debt within the meaning of the FDCPA.' *Hulse v. Ocwen Fed. Bank, FSB,* 195 F.Supp.2d 1188, 1204 (D.Or.2002); *see also Williams v. Countrywide Home Loans, Inc.,* 504 F.Supp.2d 176, 190 (S.D.Tex.2007) ("Mortgage companies collecting debts are not 'debt collectors')." Ines v. Countrywide Home Loans, Inc., No. 08CV1267WQH(NLS), 2008 WL 4791863, at *2 (S.D. Cal. Nov. 3, 2008).

TENTATIVE RULING #5: DEFENDANTS' 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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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.

6.	**21CV0038**	**LVNV FUNDING v. SCHMEECKLE**
Motion to Set-Aside Default		

The Court entered default judgment against Defendant on July 3, 2023. Pursuant to California Code of Civil Procedure § 473, Defendant's Motion is extremely untimely and well beyond six months from the entry of judgment.

TENTATIVE RULING #6: MOTION TO SET-ASIDE DEFAULT 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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7.	25CV3271	WELLS FARGO BANK v. WALLWEBER
Motion to Deem Admitted		

On or about January 13, 2026, Plaintiff served their first set of discovery, namely, Request for Admissions - Set One (collectively, "Discovery") on Defendant. A true and correct copy of the Request for Admissions is attached as Exhibit "1", to the Declaration of Edgar B. Lopez, Esq.

The Defendant's responses were due on or before February 17, 2026, however none were received. On or about February 17, 2026, Plaintiff sent a meet and confer letter to the Defendant advising that the responses were past due; the letter further provided an extension in which to respond. However, to date, no responses have been received, which necessitated this motion. Attached to the Declaration of Edgar B. Lopez, Esq. as Exhibit "2" and incorporated herein by reference, is the meet and confer letter sent to the Defendant.

Any party may obtain discovery by written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. See Cal. Code Civ. Proc. §2033.010. In addition, "[w]ithin 30 days after service of requests for admissions, the party to whom the requests are directed shall serve the original of the response to them on the requesting party ... " See Cal. Code Civ. Proc. §2033.250. Further, a responding party's untimely response to the request for admissions waives any objection to the requests, including one based on privilege or work product. See Cal. Code Civ. Proc. § 2033.280. Moreover, the requesting party may move for and the court may grant an order that the genuineness of any documents and the truth of any matters specified in the requests for admission be deemed admitted. See Cal. Code Civ. Proc. § 2033.420 (a).

There is no opposition by Defendant.

TENTATIVE RULING #7: PLAINTIFF'S MOTION FOR AN ORDER DEEMING THE TRUTH OF THE MATTERS SPECIFIED IN PLAINTIFF'S REQUEST FOR ADMISSIONS AS ADMITTED 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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8.	**24CV2535**	**MONTAZERI v. MONTAZERI et al**
Demurrer		

This is fundamentally a dispute between father and son over the operation of a jointly owned mining business that is held by two LLCs. One LLC ("Hwy 193") owns real property and profits from mining activity performed on its property. The other LLC ("Chili Bar") performs the mining activity. Plaintiff (the son) owns a 20% interest in both entities, which were gifted to him by his father Mohsen Montazeri and mother Pamela Montazeri ("Defendants").

The Second Amended Complaint ("SAC") includes 3 causes of action: (1) Breach of Majority Owners' Fiduciary Duties; (2) Breach of Contract; and (3) Breach of Contract.

Defendants demur to the First and Second causes of action on the following grounds:

1. The First cause of action fails to state facts sufficient to constitute a valid cause of action against Pamela Montazeri;
2. The Second cause of action fails to state facts sufficient to constitute a valid 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").

The parties engaged in the meet and confer process, albeit unsuccessfully. (Prendergast Declaration).

Request for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

Defendants request that the Court take judicial notice regarding California Secretary of State filings or absence of documents, the Court's October 10, 2025 Tentative Ruling, and the Court's December 1, 2025 Minute Order.

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)

There is no objection by Plaintiff. Defendants' request for judicial notice is granted.

First Cause of Action

The first cause of action for breach of fiduciary duty, which is asserted against Plaintiff's mother, Pamela Montazeri, seeks to hold her liable for aiding and abetting an alleged tort, but Defendant argues that it does not allege any facts amounting to substantial assistance - a required element. "To plead aiding and abetting by a defendant, the plaintiff must allege that the defendant had actual knowledge of the 'specific primary wrong' being committed, and gave

substantial assistance to the wrongful conduct." (*Goonewardene v. ADP, LLC* (2016) 5 Cal.App.5th 154, 188, revd.. on other grounds (2019) 6 Cal.5th 817 (citing *Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1145, 1146-1147).) "Mere knowledge that a tort is being committed and the failure to prevent it does not constitute aiding and abetting." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1326.

Defendant argues that Plaintiff has not alleged any facts amounting to assistance, let alone substantial assistance, but instead the Complaint only contains only conclusory allegations. (SAC ¶ 44) The Court previously ruled that FAC sufficiently alleged that Mrs. Montazeri had actual knowledge but there was merely a conclusory allegation that she provided substantial assistance. However, in the SAC, Plaintiff alleges that Mrs. Montazeri "knowingly provided substantial assistance and encouragement to defendant Mohsen Montazeri…[by using] her voting power in Highway 193 to approve the breaches…." (SAC ¶ 44)

Therefore, the Court finds that the SAC sufficiently alleges that Mrs. Montazeri had actual knowledge and offered substantial assistance. Demurrer as to the first cause of action is overruled.

Second Cause of Action

To state a viable breach of contract claim, a plaintiff must plead and prove: (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) A breach of contract is "[t]he wrongful, i.e., the unjustified or unexcused, failure to perform" the terms of a contract. (*Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 570; 1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, §872, p. 919.)

As to the second cause of action, the Court previously found that the complaint failed to specifically allege sufficient facts to constitute a breach of contract cause of action. The Court additionally had concerns about the viability of the cause of action to the extent it is premised on an alleged threatened breach as opposed to an actual breach. After reviewing the terms, the Court finds that the SAC fails to allege facts sufficient to support a cause of action for breach of contract. Demurrer as to the second cause of action is sustained.

California law places a clear burden on the plaintiff to show that amendment would cure the defects identified in a demurrer. When a trial court sustains a demurrer without leave to amend, the plaintiff must demonstrate that "the trial court abused its discretion" and "show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading" (*Smith v. BP Lubricants USA Inc*., 64 Cal.App.5th 138 (2021)). Plaintiff has already been given two chances to amend his initial pleading and has made minimal changes. In his opposition to the Demurrer, Plaintiff merely includes one sentence saying he "can easily cure any deficiency" but fails to show how amendment could cure the defect, or why it was not done in the two prior amendments. Leave to amend is denied.

TENTATIVE RULING #8:

1. **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEMURRER AS TO THE FIRST CAUSE OF ACTION IS OVERRULED.**
3. **DEMRURER AS TO THE SECOND CAUSE OF ACTION 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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9.	25CV2707	HIGH HILL RANCH v. REINDERS
Motion to Compel Arbitration		

Fudge Factory moves for an order to compel arbitration on the grounds that the allegations made in High Hill Ranch's complaint (the "HHR Complaint" and Fudge Factory's Request for Judicial Notice ("RJN") No. 4) relate to topics covered in the Parties' 2002 settlement agreement (the "2002 Agreement") which contains a mandatory arbitration provision.

Requests for Judicial Notice

Defendant requests that the Court take judicial notice of several court records. Pursuant to Evidence Code § 450 *et seq.*, Defendant's requests are granted. Plaintiff also requests that the Court take judicial notice of various court records. Pursuant to Evidence Code § 450 *et seq.*, Plaintiff's requests are granted.

Motion

After reviewing all the pleadings, the Court relies on the arguments made in Fudge Factory's Reply in granting the motion to compel arbitration.

In its 2022 Order, this Court expressly determined that "the terms and topics of the 2002 [S]ettlement [A]greement expressly included . . . [removal of] any obstructions, barriers which impair the ordinary flow of traffic and/or pedestrians within the easement to or from the parties; [and] parking facilities or businesses." Fudge Factory-RJN ("FF-RJN") RJN No. 3, pp. 28–29. In the 2022 Order, this Court specifically found that the arbitration provision "is not limited to the disputes that arose at the time of the settlement and includes future events arising from or related to the terms or topics of the Settlement Agreement [emphasis added]." FF-RJN No. 3, pp.28– 29. The December 31, 2012, expiration date at paragraph 3 of the 2002 Settlement Agreement does not apply, and in any event the 2010 Judgment provides that disputes are to be resolved in arbitration. FF-RJN No. 7, p. 4, ¶ 3.

The Court in its 2022 Order emphasized that "[h]aving alleged all defendants acted as agents of one another, [a plaintiff] is bound by the legal consequences of [its] allegations." RJN No. 3, pp. 27. The Court further noted that Jerry Visman (now deceased) doing business as High Hill Ranch was the sole member, agent for service of process, and CEO of High Hill Ranch, LLC, and that "Defendant High Hill Ranch, LLC is at the very least a mere continuation of the High Hill Ranch proprietorship." RJN No. 3, pp. 24–25. Thereon, this Court applied the principle from *Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 615 that "it would be unfair to defendants to allow [plaintiff] to invoke agency principles when it is to his advantage to do so, but to disavow those same principles when it is not." Those same agency principles remain applicable now and it would be unfair to allow High Hill to invoke the arbitration provisions when it wants to and then oppose arbitration on the same grounds when it chooses.

In its 2022 Order, the Court sent all of Fudge Factory's claims, including those against High Hill Ranch, to arbitration. FF-RJN No. 7, p. 25-27, ¶ 2 ("High Hill Ranch, LLC is at the very least a mere continuation of the High Hill Ranch proprietorship").

The Court also agrees that if this case is not sent to arbitration, there is potential for inconsistent judgments.

Stay

Once a court determines that a dispute is arbitrable, California law directs courts to stay the proceedings. *See* Code Civil Proc., § 1281.4. Fudge Factory argues, as such, any further proceedings on the HHR Complaint must be stayed "until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies." Code Civ. Proc. § 1281.4.

TENTATIVE RULING #9: MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS 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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