1. MATTER OF LEA 22CV0886

OSC Re: Name Change.

TENTATIVE RULING # 1: THE PETITION IS GRANTED.

2. MATTER OF RIFFEY 22CV0817

OSC Re: Name Change.

TENTATIVE RULING # 2: THE PETITION IS GRANTED.

3. MATTER OF S. 22CV0754

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

The petition seeks to change the name of a minor; one of the minor's parents has not joined in the petition; there is no proof of personal service of notice of the hearing or the order to show cause on the minor's other parent in the court's file; and the petition fails to identify the other parent. This needs to be explained.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

4. DUPPMAN v. WAGSTER PC-20210407

Hearing Re: Default Judgment.

Plaintiff filed an action against defendant for personal injuries allegedly sustained during a motor vehicle accident. The proof of service filed on December 22, 2021 declares that defendant was personally served the summons and complaint on December 16, 2021. Default was entered on April 1, 2022. Plaintiff seeks entry of a judgment in the amount of $1,000,000 in damages, plus an award of attorney fees and costs.

After default the plaintiff may apply to the court for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff; and shall render judgment in his or her favor for such sum not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by such evidence to be just. (Code of Civil Procedure, § 585(b).)

Where damages are sought for personal injuries or wrongful death the plaintiff is statutorily mandated to serve a statement of damages on defendants in the same manner as a summons that specifies the separate amounts of general and special damages sought to be recovered from the defendants (Code of Civil Procedure, § 425.11(d).) and either the complaint or the statement of damages must separately state the amounts of special and general damages sought. (See Schwab v. Southern California Gas Co. (2004) 114 Cal.App.4th 1308, 1322; and Schwab v. Rondel Homes, Inc. (1991) 53 Cal.3d 428, 434.)

The Third District Court of Appeal has held with regard to sufficient allegations of the amount of damages in order to enter a default judgment: "Under *Greenup* and *Schwab,* this is insufficient to give the requisite notice of the amount of damages claimed. In order to meet the notice requirements imposed by due process, a plaintiff must either give notice of the damages

claimed in a separate statement of damages or by the allegations of the complaint. To pass constitutional muster, the complaint must either allege a specific dollar amount of damages in the body or prayer or at the very least allege the boilerplate damages are "in an amount that exceeds the jurisdictional requirements" of the superior court. An allegation seeking damages "according to proof" fails to fulfill the mandate of section 425.11 or of due process. After all, a "defendant is entitled to actual notice of the liability to which he or she may be subjected, a reasonable period of time before default may be entered." (*Schwab, supra,* 53 Cal.3d at p. 435, 280 Cal.Rptr. 83, 808 P.2d 226.)" (Parish v. Peters (1991) 1 Cal.App.4th 202, 216.)

The Third District Court of Appeal has held: "A defendant's failure to answer the complaint has the same effect as admitting the well-pleaded allegations of the complaint, and as to these admissions *no further proof of liability is required.* (§ 431.20, subd. (a); *Kim, supra,* 201 Cal.App.4th at pp. 281–282, 133 Cal.Rptr.3d 774.) Thus, in a default situation such as this, if the complaint properly states a cause of action, the only additional proof required for the judgment is that needed to establish the amount of damages. (See *Beeman v. Burling, supra,* 216 Cal.App.3d at p. 1597, 265 Cal.Rptr. 719; see also *Ostling v. Loring, supra,* 27 Cal.App.4th at p. 1745, 33 Cal.Rptr.2d 391.)" (Emphasis added.) (Carlsen v. Koivumaki (2014) 227 Cal.App.4th 879, 898.)

"Plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed. (Code of Civ.Proc., § 585; *Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560, 33 Cal.Rptr. 415.)" (Barragan v. Banco BCH (1986) 188 Cal.App.3d 283, 302.)

""It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is not in plaintiffs' interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the

appropriate claims get through." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868, 121 Cal.Rptr.2d 695 (*Heidary*).)" (Electronic Funds Solutions v. Murphy (2005) 134 Cal.App.4th 1161, 1179.)

With the above-cited principles in mind, the court will rule on the request to enter a default judgment against defendant.

First, there is no evidence in the declaration of plaintiff's counsel in support of entry of judgment establishing plaintiff's damages amounted to $1,000,000, or any legal citation supporting a claim for an award of attorney fees in a personal injury case. All the declaration states is the service of the summons and complaint, the failure to respond and that judgment should be entered in the amount of $1,026.973.56 without any evidence whatsoever as to the injuries sustained, medical expenses incurred, or factual evidence establishing the pain, suffering, inconvenience and emotional distress plaintiff suffered as a result of the motor vehicle accident.

Second, plaintiff filed a complaint for personal injuries, which does not allege a specific amount of damages sought. The proof of service filed on July 21, 2022 declares that the request for entry of default, declaration in support of application for default judgment, judgment and statement of damages were personally served on defendant on June 13, 2022. Default had already been entered over two months prior to service of the statement of damages seeking an award of over one million dollars. The entry of default prevents defendant from responding to the complaint now that defendant was notified that plaintiff was being exposed to a judgment in the amount of over one million dollars.

"Under section 580, subdivision (a), "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint[.]" "The courts have consistently held section 580 is an unqualified limit on the jurisdiction of courts entering default judgments. As a general

rule, a default judgment is limited to the damages of which the defendant had notice. Further, the courts have reaffirmed the language of section 580 is mandatory. Therefore, 'in all default judgments the demand sets a ceiling on recovery.' " (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 534, 3 Cal.Rptr.3d 604, quoting *Greenup v. Rodman* (1986) 42 Cal.3d 822, 824, 231 Cal.Rptr. 220, 726 P.2d 1295.) ¶ Because that ceiling is jurisdictional, "a default judgment is void when the damages are in excess of the damages specified in the complaint or the statement of damages." (*Yeung v. Soos* (2004) 119 Cal.App.4th 576, 582, 14 Cal.Rptr.3d 502.) "A void judgment may be challenged at any time." (*Ibid.*)" (David S. Karton, a Law Corp. v. Dougherty (2009) 171 Cal.App.4th 133, 150.)

Since a party to be defaulted has not appeared in the action, such a statement must be personally served prior to entry of default. (Code of Civil Procedure, §§ 425.11(c) and (d).)

The appellate court in Hamm v. Elkin (1987) 196 Cal.App.3d 1343, found at page 1346: "The court correctly interpreted the statute as requiring the statement of damages before the clerk's default. This interpretation is appropriate for a number of reasons. It furthers the strong policy of the law in favor of adjudication on the merits. It recognizes that knowledge of the alleged amount of damages may be crucial to a defendant's decision whether to permit a clerk's default. (See *Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 930, 206 Cal.Rptr. 924.) It reflects the common understanding that a clerk's default is 'taken' by counsel while the default judgment is 'entered' by the court. Finally, one purpose of section 425.11 is to give the defendant a final chance to respond to the allegations of the complaint (*Stevenson v. Turner* (1979) 94 Cal.App.3d 315, 319-320, 156 Cal.Rptr. 499), and this purpose would be frustrated if the plaintiff could wait until after the clerk's default before serving the statement, when the defendant could respond only on the issue of damages." (Emphasis added.)

The California Supreme Court affirmed the trial court's granting a motion to vacate a default where the statement of damages was not served on the defaulted defendant before entry of the default. The Supreme Court held: "In *Petty v. Manpower, Inc., supra,* 94 Cal.App.3d 794, 156 Cal.Rptr. 622, the Court of Appeal reversed a default judgment in the absence of notice to the defendant of the amount of damages sought. Similarly, in *Hamm v. Elkin, supra,* 196 Cal.App.3d 1343, 242 Cal.Rptr. 545, the Court of Appeal refused to uphold a default where a statement of damages was not served upon the defendant until after the default was entered. And in *Plotitsa v. Superior Court, supra,* 140 Cal.App.3d 755, 189 Cal.Rptr. 769, the Court of Appeal vacated a default where notice of damages claimed had been sent only one day before default was entered against the defendant. (See also *Twine v. Compton Supermarket, supra,* 179 Cal.App.3d 514, 224 Cal.Rptr. 562.) [Footnote omitted.] ¶ We agree with these decisions' interpretation of the statute. " ' "[S]ignificance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." ' " (*J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 36, 160 Cal.Rptr. 710, 603 P.2d 1306.) In section 425.11, the use of the word "notice" and the terms of art "special and general damages" implies that the Legislature intended that a defendant be given actual notice of the special and general damages claimed by the plaintiff. ¶ This holding is consistent with our holding in *Greenup.* In that case, we recognized that sections 425.10 and 425.11 "aim to ensure that a defendant who declines to contest an action does not thereby subject himself to open-ended liability." (*Greenup, supra,* 42 Cal.3d at p. 826, 231 Cal.Rptr. 220, 726 P.2d 1295.) We also noted that "the allegations of a complaint may cure a defective prayer for damages." (*Id.* at p. 829, 231 Cal.Rptr. 220, 726 P.2d 1295.) Thus, even though the plaintiff in *Greenup* did not follow the procedure required by sections 425.10 and 425.11, we held that the plaintiff's prayer in the complaint for general damages "in an amount that exceeds the jurisdictional

requirements" of the superior court provided sufficient notice to that defendant of the amount of damages claimed. (*Id.* at p. 830, 231 Cal.Rptr. 220, 726 P.2d 1295.) ¶ In this case, the fact that defendants had notice of plaintiffs' prayer for statutory damages in an amount according to proof but "no less than $250" and punitive damages in the amount of $500,000 is not sufficient to meet the requirements of section 425.11. Neither statutory nor punitive damages fulfill the mandate of section 425.11, which requires specific notice of "the amount of *special and general* damages sought to be recovered...." (Italics added.) Accordingly, we decline to hold that notice of statutory or punitive damages provides "notice" of special and general damages claimed as required by section 425.11. ¶ We cannot allow a default judgment to be entered against defendants without proper notice to them of the amount of damages sought. A defendant is entitled to actual notice of the liability to which he or she may be subjected, a reasonable period of time before default may be entered. The trial court in this case properly vacated the default entered against defendants." (Emphasis added.) (Schwab v. Rondel Homes, Inc. (1991) 53 Cal.3d 428, 433–435.)

In 1993 Section 425.11(d) was amended to require service of the statement in the same manner as a summons. Thus, after 1993, actual notice does not satisfy section 425.11.

As it now stands, the court can not enter a default judgment in any amount, because defendant was not personally served the statement of damages prior to entry of default, therefore, defendant was deprived of any opportunity to assess in light of a claim for over one million dollars in damages whether to permit a clerk's default in this action. The only readily apparent remedy to the situation appears to be plaintiff stipulating to vacating the default and personally serving defendant with notice that defendant has 30 days to respond to the complaint and statement of damages, or default may be taken.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. MATTER OF J.G. WENTWORTH ORIGINATIONS, LLC 22CV0890

Petition to Approve Transfer of Structured Settlement Payments.

Payee S.H. has agreed to sell monthly payments in the total amount of $467,770.20, which the petitioner states has a present value of $312,093.56. In exchange, payee S.H. will be paid $90,000.

The payee S.H. declares: the funds will be used as a down payment to purchase a house for the payee's mother and sister; payee has no children; payee is not subject to any court orders or child support obligations; payee is unemployed; the structured settlement was intended as compensation for a personal injury claim; the future periodic payments were not intended to pay for future medical care and treatment related to the incident that was the subject of the settlement; the future payments that are the subject of the proposed transfer were solely monetary in nature; and from December 1998 to June 2022 the payee has completed 15 approved transactions selling various amount of payments he was to receive from the annuity.

The transaction approved on June 10, 2022 resulted in the payee receiving $85,000, which the payee declared was to be used to pay for a family member's funeral.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code, §§ 10134, et seq. on the ground that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Insurance Code, 10137(a).)

"No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a

structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied." (Insurance Code, § 10136(a).)

""Interested parties" means, with respect to a structured settlement agreement, the payee, the payee's attorney, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party who has continuing rights or obligations under the structured settlement agreement. If the designated beneficiary is a minor, the beneficiary's parent or guardian shall be an interested party." (Insurance Code, § 10134(g).)

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 2 court days when served by express mail. (Insurance Code, §10139.5(f)(2) and Code of Civil Procedure, § 1013(c).)

The proofs of service in the court's file declare that petitioner served notice of the hearing, the petition, and supporting documents on the beneficiary/payee of the structured settlement payments, the annuity issuer and the payment obligor by mail and overnight mail on July 15, 2022; and the payee' declaration was served on the beneficiary/payee of the structured settlement payments, the annuity issuer and the payment obligor by mail on July 19, 2022.

Although significant portions of the annuity agreement and court order for the settlement are redacted related to the identity of the annuity payee in Exhibits C and D of the petition, it appears that the court order approving the settlement entered on May 24 1993 directed that the monthly and lump sum payments from the annuity be paid to the trustee of a special needs trust for the benefit of S.H. (Petition, Exhibit D – Court Order Approving Settlement, paragraph

2.c.) The annuity application form states that the payee of the annuity was a redacted name of someone who was trustee for S.H. (Petition, Exhibit C.) This needs to be explained.

In addition, the court needs further information on S.H.'s remaining income inasmuch as it appears that S.H has sold a significant amount of his annuity payments and now proposes to sell the payments from August 2023 through July 2043.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

6. MUIR v. GENERAL MOTORS PC-20210130

Plaintiff's Motion to Compel Deposition of Defendant's Most Qualified Person.

On March 18, 2021 plaintiffs filed an action against defendant asserting causes of action for Violation of the Song-Beverly Act – Breach of Express Warranty; Violation of the Song-Beverly Act – Breach of Implied Warranty; and Violation of the Song-Beverly Act – Section 1793.2.

Plaintiff moves to compel the deposition of defendant General Motors, LLC's most knowledgeable person and production of the documents requested in the notice of deposition.

Plaintiff argues: the court should not allow defendant to obstruct plaintiffs' right to depose defendant's most qualified person; the scope of discovery is broad; plaintiffs seek testimony and documents directly related to their claims under the Song-Beverly Consumer Warranty Act; and prevailing legal authority supports plaintiffs' discovery efforts.

Defendant General Motors, LLC opposes the motion on the following grounds: the motion should be denied, because plaintiffs did not satisfactorily meet and confer as plaintiffs did not address defendant's objections or the contested categories informally before filing the motion to compel; the motion should be denied as plaintiffs seek to compel irrelevant testimony and information; plaintiffs' request seeks production of trade secret material; and the motion should be denied, because plaintiffs failed to file a Rule 3.1345 separate statement with the motion.

Plaintiff filed a reply on May 9, 2022.

"The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying." (Code of Civil Procedure, § 2025.280(a))

If a party deponent fails to appear at a properly noticed deposition or fails to produce for inspection any document or tangible thing described in the deposition notice, then the party giving notice may move for an order compelling the deponent's attendance and testimony. (Code of Civil Procedure, § 2025.450(a).) "A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code of Civil Procedure, § 2025.450(b).)

Meet and Confer Requirement

Meet and confer declarations are required for motions to compel deponent's attendance and testimony and to produce the documents or things described in the deposition notice. (See Code of Civil Procedure, §§ 2025.450(a), 2025.450(b),)

"'The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o)....) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]' (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, 72 Cal.Rptr.2d 333.)" (Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1016.) "A

determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

"A single letter, followed by a response which refuses concessions, might in some instances be an adequate attempt at informal resolution, especially when a legitimate discovery objective is demonstrated. The time available before the motion filing deadline, and the extent to which the responding party was complicit in the lapse of available time, can also be relevant. An evaluation of whether, from the perspective of a reasonable person in the position of the

discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances (see, e.g., *Townsend, supra,* 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances. In the instant case, whether reviewed according to the substantial evidence or the abuse of discretion standard, or an amalgam of the two, the trial judge's decision that a greater effort at informal resolution should have been made is amply supported by this record. The petition for a writ of mandate is therefore denied to this extent." (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 432–433.)

Having read and considered the declarations submitted in support of and opposition to the motion and the plaintiffs' February 22, 2022 meet and confer letter attached as Exhibit 11 to plaintiff's counsel's declaration in support of the motion, the court finds that the attempt at informal resolution was adequate under the circumstances presented.

Separate Statement Requirement

Defendant's objections to the subject deposition served by email to plaintiffs' counsel on February 4, 2022 objected on numerous grounds to requests for production numbers 1-18, which are all categories of production requested in the notice of deposition. (See Declaration of Gregory Sogoyan in Support of Motion to Compel Deposition of Person Most Qualified, Exhibit 8 – Plaintiffs' Notice of Deposition of Person Most Knowledgeable, Exhibit A – Requests for Production, page 8, line 1 to page 10, line 15; and Exhibit 9 – Defendant's Objection to Plaintiffs' Notice of Deposition of Person Most Knowledgeable, page 21, line 16 to page 31, line 18.)

"Any motion involving the content of a discovery request or the responses to such a request shall be accompanied by a separate statement. The motions that require a separate statement include: ¶ * * * (5) a motion to compel or to quash the production of documents or tangible things at a deposition…" (Rules of Court, Rule 3.1345(a).)

"A separate statement is a separate document filed and served with the discovery motion that sets forth all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement shall be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material shall not be incorporated into the separate statement by reference. The separate statement shall include--for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following: ¶ (1) the text of the request, interrogatory, question, or inspection demand; ¶ (2) the text of each response, answer, or objection, and any further responses or answers; ¶ (3) a statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute; ¶ (4) if necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it; ¶ (5) if the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and ¶ (6) if the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them shall summarize each relevant document." (Rules of Court, Rule 3.1345 (c).)

The motion is defective in that plaintiff failed to file a separate statement document at least 16 court days before the hearing and failed to serve defendant the separate statement document 16 court days plus five calendar days before the hearing, if mailed, which sets forth each request for production in the notice of deposition to which production is requested, the response given, and the factual and legal reasons for compelling it. (Code of Civil Procedure, § 1005(b); and California Rules of Court, Rule 3.1345(c).) Such a statement is critical to the court's analysis of each request for production and the sufficiency of each response, particularly where there are numerous requests for production to which production are sought. Although Rule 3.1345 does not explicitly provide a remedy for failure to comply with it, at least one appellate court has cited with approval the trial court's dropping of a motion to compel discovery where the moving part failed to comply with Rule 335, which was renumbered as Rule 3.1345. (See BP Alaska Exploration, Inc. v. Superior Court (1988) 199 Cal.App.3d 1240, 1270 and Neary v. Regents of University of California (1986) 185 Cal.App.3d 1136, 1145.) A trial court is acting well within its discretion to deny a motion to compel discovery on the basis that the mandated separate statement was not provided or the statement provided does not comply with the requirements of the Court Rule. (Mills v. U.S. Bank (2008) 166 Cal.App.4th 871, 893.)

Plaintiffs filed a reply on May 9, 2022 wherein they apologized for failure to provide a separate statement and asserted that the moving papers contained the reasoning behind each of the requests for examination and documents. Plaintiffs also stated that they were willing to provide a separate statement within a short period of time upon instruction by the court.

Rather than deny the motion outright at the hearing on May 13, 2022, the court continued the hearing to June 24, 2022 and directed the following: Plaintiffs are to file and serve the separate statement by May 25, 2022. Defendant's response to the separate statement and a

memorandum of points and authorities limited to addressing the legal points raised in the plaintiffs' separate statement shall be filed and served by June 13, 2022. The reply was to be filed and served by June 17, 2022.

On May 23, 2022 defendant filed a declaration in opposition to the motion and another opposition to the motion.

At the hearing on June 24, 2022 plaintiff's counsel stated they were not advised to file a separate statement by May 25, 2022 or the date to file the reply. Counsel requested and was granted a continuance to allow counsel to file a separate statement.

The separate statement in support of the motion was not filed until July 8, 2022, the date of the last hearing. Defendant objects on the following grounds: the 216 page separate statement was not served on defense counsel until after business hours at 5:00 p.m. on July 6, 2022, which left defendant with less than one day to respond to the lengthy statement, rather than the 19 days granted in the court's May 13, 2022 ruling; and plaintiff should not be given a third chance to pursue this motion.

The plaintiff was provided a sufficient number of opportunities to file the separate statement in support of the motion a sufficient time prior to the multiple hearing dates to allow the defendant to file an opposition addressing the arguments and law stated in the mandated separate statement. Plaintiff failed to file any separate statement prior to the May 13 and June 24, 2022 hearing dates. Plaintiff apparently did not keep track of the May 13, 2022 hearing and specific dates set for filing the separate statement, a supplemental opposition, and a supplemental reply as the separate statement was not filed at all and plaintiff claimed plaintiff was not advised to file a separate statement by May 25, 2022 or the date to file the reply. The June 24, 2022 hearing was continued to July 8, 2022. There is evidence that the 216 page separate statement was not served on defense counsel until after business hours at 5:00 p.m.

on July 6, 2022, which left defendant with less than one day to respond to the lengthy statement, rather than the 19 days granted in the court's May 13, 2022 ruling. The separate statement was not filed with the court until the date of the continued hearing on July 8, 2022. After hearing oral argument on the motion, the court continued the hearing to August 12, 2022 without ruling on the issue of timeliness of the filing and service of the separate statement or order further briefing to allow the motion to be heard despite the late separate statement. The court also did not rule on whether it was exercising its discretion to consider a late filed separate statement.

"No paper shall be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order shall so indicate." (Rules of Court, Rule 3.1300(d).)

The motion and separate statement must be filed and served at least 16 court days before the hearing date, plus additional days for service by mail.

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. * * * if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California…" (Code of Civil Procedure, § 1005(b).)

The court finds that plaintiff was given more than adequate opportunities to conform to the statutory mandate that the separate statement be filed in order to maintain this motion to compel and utterly failed to meet the requirement of timely service of the separate statement despite multiple opportunities. The failure to comply and last minute service prejudiced defendant's ability to respond to the motion and separate statement. The court exercises its discretion to refuse to consider the late filed separate statement, leaving the motion fatally

defective as not supported by the mandated separate statement. The motion is denied due to failure to timely file and serve the mandated separate statement.

TENTATIVE RULING # 6: PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF DEFENDANT'S MOST QUALIFIED PERSON IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 EITHER IN

PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

7. PHAN v. MARSHALL MEDICAL CENTER PC-20190029

Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement.

On March 18, 2022 the court granted the motion for preliminary approval of the class action settlement, entered an order of preliminary approval, set the final approval hearing date, and approved the class notice and claim form.

The terms of the settlement are: defendant will pay a non-reversionary settlement amount of $5,000,000; the class counsel award will consist of 33 1/3% of the maximum settlement amount, which amounts to $1,666,666.67, plus payment of actual costs not to exceed $40,000; $35,000 will be paid for settlement administration costs; $112,500 is to be paid to LWDA as its share of the PAGA civil penalties; participating class members will receive a pro rata share of the net settlement amount based on their qualified workweeks as a percentage of the total of all participating class members' qualified workweeks, reduced by any required legal deductions; PAGA group members will receive pro rata payments based on their qualified PAGA pay periods during the PAGA period; the net settlement amount is estimated to be $3,085,833.33, which will result, on average, that class members will each receive $1,111.21 and PAGA group members will receive an average PAGA payment of $17.40; the individual plaintiff class representatives will each receive $7,500; if an individual check is uncashed after 180 days from issuance, the settlement administrator will void the check and the funds from the voided check will be distributed by the settlement administrator to the California State Controller's Office Unclaimed Property Fund in the name of the participating class member. There are 2,769 non-exempt persons employed by defendant for the subject period of time, with eight exclusions.

Plaintiff moves for final approval of the class settlement and entry of judgment. Plaintiff contends: the class notice was provided and it comports with California law and due process; the settlement is entitled to a presumption of fairness, because the settlement negotiations were conducted based upon sufficient investigation and informal discovery, the settlement was reached during arm's length bargaining, including mediation, class counsel has extensive experience in wage and hour class actions, and no objections to the settlement were received; the settlement is fair, adequate and reasonable; counsel's fees and costs are reasonable; the class representative service awards are reasonable; and the settlement administration costs of up to $35,000 should be approved as they are reasonable.

The proof of service in the court's file declares that notice of the hearing and the moving papers were served on plaintiff Herrera's counsel and defense counsel by email on July 21, 2022. There is no opposition to the motion in the court's file.

""The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970, 124 Cal.Rptr. 376.) The notice " 'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.' " (*Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 251, 110 Cal.Rptr.2d 145.) The rules reflect a scheme that is designed to clearly describe class members who should be notified of the action and may be affected by its resolution. An order certifying a class " must contain a description of the class...." (Cal. Rules of Court, rule 3. 765(a).) When the court determines it is unnecessary or not feasible to personally notify all potential class members of an action, "the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action...." (Rule 3.766(f).) When the court approves the settlement or

compromise of a class action, it must give notice to the class of its preliminary approval and the opportunity for class members to object and, in appropriate cases, opt out of the class. (Rules 3.766(d), 3.769.) Once a settlement is approved, the court is required to enter judgment upon the settlement and the judgment "must include and describe those whom the court finds to be members of the class." (Rule 3.771(a).) These principles rest upon an assumption that the definition of a plaintiff class will be clear and free from obvious ambiguity." (Cho v. Seagate Technology Holdings, Inc. (2009) 177 Cal.App.4th 734, 745-746.)

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Rules of Court, Rule 3.769(g).)

"If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Rules of Court, Rule 3.769(h).)

- Factors to Consider in Approving Class Action Settlement

"" ' "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." ' " (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579, 165 Cal.Rptr. 1; see also *Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 55, 129 Cal.Rptr. 509.) The court must determine the settlement is fair, adequate, and reasonable. (See *Officers for Justice v. Civil Service Com.* (9th Cir.1982) 688 F.2d 615, 625; Fed. Rules Civ. Proc., rule 23(e), 28 U.S.C.) [FN7] The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Officers for Justice v. Civil Service Com.*, supra, 688 F.2d at p. 624.) ¶ FN7. In the absence of California law on the

subject, California courts look to federal authority. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821, 94 Cal.Rptr. 796, 484 P.2d 964.)" (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1800-1801.)

The Third District Court of Appeal has held: "We review an order approving a settlement as follows: ¶ "The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' " (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, 56 Cal.Rptr.2d 483.) ¶ "Assuming the burden is on the proponents [of the settlement], a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (Id. at p. 1802, 133 Cal.Rptr.2d 828.)" (In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504-505.)

Having read and considered the moving papers and the declarations submitted in support of the motion, and applying the legal principles cited above, the court finds that the settlement is fair, adequate, and reasonable.

- Attorney Fees

"Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action." (Rules of Court, Rule 3.769(b).)

Having read and considered the moving papers and the declarations submitted in support of the motion, the court finds that the attorney fees and costs are reasonable and grants the request for payment of attorney fees in the amount of $1,666,666.67 and costs in the amount of $34,449.13

TENTATIVE RULING # 7: PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY

AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. KATZAKIAN v. SUN RIDGE RANCH HOA PC-20190048

Defendants' Motion for Summary Judgment.

TENTATIVE RULING # 8: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 19, 2022 IN DEPARTMENT NINE.

9. AORKAI HOLDINGS v. LABMOR ENTERPRISES PC-20190488

(1) Plaintiff's Motion to Compel Defendant Callrick Business, LP to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Callrick Business, LP.

(2) Plaintiff's Motion to Compel Defendant Constantly Growing, LLC to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Constantly Growing, LLC.

(3) Plaintiff's Motion to Compel Defendant Labmor Enterprises, Inc. to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Labmor Enterprises, Inc.

(4) Plaintiff's Motion to Compel Defendant Constantly Growing, Inc. to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Constantly Growing, Inc.

TENTATIVE RULING # 9: THESE MATTERS WERE PREVIOUSLY CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 21, 2022 IN DEPARTMENT NINE AT WHICH TIME THE COURT WILL DECIDE WHETHER TO APPOINT A DISCOVERY REFEREE OR PROVIDE A TENTATIVE RULING.

10. WANLAND v. BEST LEGAL SUPPORT TEAM, LLC 21CV0383

Motion to Compel Answers to Interrogatories.

Plaintiff's counsel declares: on May 16, 2022 special interrogatories were served on defendants Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC; when defense counsel was contacted about the failure to respond, defense counsel proposed that they await the court's ruling on a pending demurrer; plaintiff's counsel rejected the request as untimely; and despite a demand for responses without objections by July 1, 2022, defendants failed to provide any responses to the discovery propounded. Plaintiff moves to compel answers without objections and further requests an award of monetary sanctions in the amount of $2,197.50.

The proof of service in the court's file declares that on July 5, 2022 notice of the hearing and copies of the moving papers were served by mail and email on defense counsel. There was no opposition to the motion in the court's file at the time this ruling was prepared.

The party to whom interrogatories have been served must serve responses upon the propounding party within 30 days after service or any other later date the propounding party stipulates to. (Code of Civil Procedure, §§ 2030.260 and 2030.270.) The failure to timely respond waives all objections to the interrogatories and the propounding party may move to compel answers to interrogatories and production of documents. (Code of Civil Procedure, § 2030.290.)

Absent opposition, it appears appropriate under the circumstances to grant the motion to compel answers without objection.

Sanctions

Failure to respond to interrogatories is a sanctionable misuse of the discovery process. (Code of Civil Procedure, §§ 2023.010(d), 2023.030, 2030.290(c).) The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

It appears appropriate under the circumstances presented to award plaintiff the amount of $2,197.50 in monetary sanctions payable by defendants within ten days.

TENTATIVE RULING # 10: PLAINTIFF'S MOTION TO COMPEL ANSWERS TO SPECIAL INTERROGATORIES IS GRANTED. DEFENDANTS ARE ORDERED TO ANSWER SPECIAL INTERROGATORIES, SET ONE, WITHOUT OBJECTIONS, WITHIN TEN DAYS. DEFENDANTS ARE FURTHER ORDERED TO PAY $2,197.50 IN MONETARY SANCTIONS TO PLAINTIFF WITHIN TEN DAYS. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY

AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. BANK OF AMERICA v. WEBSTER PCL-20210269

Plaintiff's Motion for Judgment on the Pleadings.

On April 3, 2021 plaintiff filed an action for common counts against defendant related to a credit account. Plaintiff alleges: that defendant owes a principal balance in the amount of $13,942.73 on an open book account; and despite demand for payment defendant has failed to pay plaintiff.

The proof of service filed on April 29, 2022 declares that defendant was personally served the summons and complaint on April 23, 2021. There is no answer to the complaint in the court's file.

During law and motion proceedings on plaintiff's motion to deem admitted requests for admission, plaintiff's counsel declared that requests for admission were served by mail on defendant on June 2, 2021 and no responses were received. Defendant was statutorily permitted to serve such discovery as more than ten days had elapsed since defendant was personally served the summons and complaint.

"(b) A plaintiff may make requests for admission by a party without leave of court at any time that is 10 days after the service of the summons on, or appearance by, that party, whichever occurs first." (Code of Civil Procedure, §2033.020(b).)

Defendant was present at the hearing on the motion to deem admitted requests for admission, which took place on October 29, 2021. The court granted plaintiff's motion to deem admitted requests for admission propounded upon defendant. The formal order deeming requests for admission, set one admitted was entered on July 11, 2022.

Plaintiff moves for entry of judgment on the pleadings on the grounds that the complaint states a cause of action against defendant to collect the alleged debt and that the deemed admissions leave defendant with no defense to the action.

Plaintiff filed a memorandum of costs seeking award of $617 in costs for filing and motion fees, service of process, and court reporter fees.

The proofs of service in the court's file declares that on June 29, 2022 defendant was served the notice of the hearing, the moving papers, the memorandum of costs, attorney declaration, and request for judicial notice by mail. There was no opposition to the motion in the court's file at the time this ruling was prepared.

Meet and Confer Prior to Motion for Judgment on the Pleadings

"(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. ¶ (1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment. ¶ (2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a

motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following: ¶ (A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings. ¶ (B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith. ¶ (4) A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Code of Civil Procedure, § 439(a).)

Plaintiff's counsel has submitted a meet and confer declaration, which states that plaintiff did not have defendant's phone number and, therefore, was unable to meet and confer by phone; plaintiff's counsel attempted to meet and confer by correspondence sent to defendant on November 9, 2021; and that counsel received no response from defendant.

Motion for Judgment on the Pleadings Principles

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to

Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Emphasis added.) (Code of Civil Procedure, § 438(d).)

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.)

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)" (Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331.) However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. (See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.)

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

"It is true that a court may take judicial notice of a party's admissions or concessions, but only in cases where the admission "can not reasonably be controverted," such as in answers to interrogatories or requests for admission, or in affidavits and declarations filed on the party's behalf. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989–990, 94 Cal.Rptr.2d 643; see also *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604–605, 176 Cal.Rptr. 824 ["The court will take judicial notice of records such as admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court."].)" (Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal.App.4th 471, 485.)

Plaintiff has requested the court to take judicial notice of the order deeming admitted the requests for admission. The court takes judicial notice of that order

The following facts were deemed admitted by defendant and, therefore, can not reasonably be controverted: defendant had a credit account with plaintiff; periodic account statements were received by defendant regarding that credit account; on April 13, 2021 there was a balance owing on the account in the amount of $13,942.73; no payments on the credit account have been made since April 13, 2021; and the last payment made on the credit account was made within the 3 years immediately prior to April 13, 2021. Defendant was also deemed to have admitted that the attached billing statement from Bank of America to defendant was genuine. The billing statement showed a balance amount of $13,942.73 owing as of October 15, 2020.

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225, 162 Cal.Rptr. 669), but the burden of demonstrating such an abuse of discretion is on the appellant. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.)" (Atlas Assurance Co. v. McCombs Corp. (1983) 146 Cal.App.3d 135, 149.)

Defendant's deemed admissions establish that defendant owes plaintiff $13,942.73. Defendant has not opposed the motion, has not advised the court how an answer could state a viable defense in light of the deemed admissions, and it appears to the court that the deficiency can not be remedied by amendment. Under the circumstances presented, it appears appropriate to grant the motion without leave to amend and enter judgment in favor of plaintiff for the amount prayed.

TENTATIVE RULING # 11: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. JUDGMENT SHALL ENTER IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $13,942.73, PLUS COST OF $617.00. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT

WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. POTOSKY REVOCABLE LIVING TRUST v. BELFORD ESTATES HOA 21CV0356

(1) Defendant's Demurrer to 1st Amended Complaint.

(2) Defendant's Motion to Strike Portions of 1st Amended Complaint.

Defendant's Demurrer to 1st Amended Complaint.

On June 10, 2022 the court granted plaintiff's motion for leave to file a 1st emended complaint. The 1st amended complaint asserts causes of action against defendants for breach of contract, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and fraud allegedly arising from a dispute over a fencing project and shed project proposed by plaintiffs, which the HOA rejected; and the alleged improper adoption of an amendment to the C,C,&Rs to allegedly allow the HOA to harass and punish plaintiff for its alleged violation of the C,C,&Rs.

Defendants demur to all causes of action on the following grounds: the fraud cause of action is not pled with the required specificity of factual allegations; and each cause of action is uncertain, ambiguous, and unintelligible.

Plaintiff opposes the demurrers on the following grounds: the allegations of the fraud cause of action in paragraphs 4-38 allege with the required specificity the facts that establish the fraud cause of action; and defendants Belford Estates HOA and its President, defendant Shoff, both committed the alleged causes of action and there is no need to separate them in order to plead the causes of action with the required certainty.

Defendants replied to the opposition.

Demurrer Principles

When any ground for objection to a complaint appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '... "plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (Highlanders, Inc. v. Olsan (1978) 77 Cal.App.3d 690, 696-697.)

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any

judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.) Mistaken labels and confusion of legal theory are not fatal because the doctrine of "theory of the pleading" has long been repudiated in this state. (*Lacy v. Laurentide Finance Corp*., 28 Cal.App.3d 251, 256-257, 104 Cal.Rptr. 547.)" (Spurr v. Spurr (1979) 88 Cal.App.3d 614, 617.)

The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 870-871.)

With the above cited principles in mind, he court will rule on the demurrers to the 2nd amended complaint.

Fraud Cause of Action

"…[E]very element of a cause of action for fraud must be alleged both factually and specifically, and the policy of liberal construction of pleadings will not be invoked to sustain a defective complaint. (*Hall v. Department of Adoptions* (1975) 47 Cal.App.3d 898, 904, 121 Cal.Rptr. 223.)" (Cooper v. Equity Gen. Insurance (1990) 219 Cal.App.3d 1252, 1262.) "This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered." (*Hills Trans. Co. v. Southwest Forest Industries Inc.* (1968) 266 Cal.App.2d 702, 707, 72 Cal.Rptr. 441.)" (Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 73.)

Plaintiff only alleges one specific misrepresentation by one specific person, that defendant Shoff, the HOA president, misrepresented that the Architectural Committee rejected the

plaintiff's application when defendant Shoff sent the response to the application to the plaintiff. (1st Amended Complaint, paragraph 21.)

The only misrepresentation that is alleged in the 1st amended complaint to have resulted in fraud is that defendants by entering into the Belford Estates HOA agreement (C,C,&Rs) defendants promised in December 2000 defendants and plaintiff represented they would work toward a common plan and scheme of increasing the value and desirability of properties within the HOA.(1st Amended Complaint, paragraphs 6, 25, and 35-37.) The fraud cause of action is not premised upon the alleged misrepresentation by defendant Shoff that the Architectural Committee rejected the plaintiff's application.

There are no specific factual allegations which show how, when, where, to whom, and by what means the representations were tendered. The fraud cause of action lacks the required specificity of factual allegations. The demurrer to the fraud cause of action is sustained with ten days leave to amend.

Special Demurrer

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 927, p. 364; 1 Weil & Brown, Civil Procedure Before Trial (1990) § 7:85, p. 7-23.)" (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

"A special demurrer should be overruled where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *People v. Lim*, 18 Cal.2d 872, 882, 118 P.2d 472. All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of

the cause of action. *Smith v. Kern County Land Co.*, 51 Cal.2d 205, 209, 331 P.2d 645. While there are some uncertainties in counts II and III, they are largely matters which lie within the knowledge of defendants. A demurrer does not lie to such matters. *Turner v. Milstein*, 103 Cal.App.2d 651, 658, 230 P.2d 25." (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.)

"The CC & R's benefit and bind the owners of all separate interests in the project. (Civ.Code, § 1354, subd. (a).) Unless the declaration provides otherwise, CC & R's may be enforced by any owner of a separate interest, by the association or by both. (Civ.Code, §§ 1354, 1460 et seq.; *Nahrstedt v. Lakeside Village Condominium Assn., supra,* 8 Cal.4th at pp. 375–376, 33 Cal.Rptr.2d 63, 878 P.2d 1275; *Franklin v. Marie Antoinette Condominium Assn.* (1993) 19 Cal.App.4th 824, 832, fn. 11, 23 Cal.Rptr.2d 744; see generally Sproul & Rosenberry, *Advising Cal. Condominium and Homeowners Associations* (Cont.Ed.Bar 1991) § 6.43, p. 297; 4 Witkin, Summary of Cal.Law (9th ed. 1987) Real Property, § 328, p. 529.) A party who is damaged by a violation of the CC & R's may seek money damages. (*Mackinder v. OSCA Development Co.* (1984) 151 Cal.App.3d 728, 737, 198 Cal.Rptr. 864; see generally Sproul & Rosenberry, *Advising Cal. Condominium and Homeowners Associations, supra,* § 7.37, p. 347.)" (Cutujian v. Benedict Hills Estates Assn. (1996) 41 Cal.App.4th 1379, 1384–1385.)

Therefore, an individual HOA member can enforce the proper performance of the C,C,&Rs obligations of any other HOA member and/or the C.C.&R obligations owed by the HOA and its officers and directors. The argument that defendant Shoff is not a party to an agreement lacks merit.

The 1st cause of action incorporates into the breach of contract cause of action all prior allegations, including the allegations concerning violations of the C,C,&Rs by defendant HOA

President Shoff (See 1st Amended Complaint, paragraphs 9, 10, 18-22, and 24.); and further alleges: Defendants failed to follow the contractual provisions of the C,C,&Rs, thereby breaching their contract with plaintiffs causing damages. (Emphasis added.) (1st Amended Complaint, paragraph 25.) The 1st amended complaint sets forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendants of the nature, source, and extent of the breach of contract cause of action asserted against both defendants.

The demurrer to the breach of contact cause of action is overruled.

The breach of implied covenant of good faith and fair dealing only alleges that defendant Belford Estates HOA breached the implied covenant. (1st Amended Complaint, paragraph 28.)

While the allegations set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant Belford Estates HOA of the nature, source, and extent of the breach of implied covenant of good faith and fair dealing cause of action asserted against it, the allegations are insufficient to set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to reasonably place defendant Shoff on notice that the breach of implied covenant of good faith and fair dealing cause of action is being asserted against him.

The demurrer to the breach of covenant of good faith and fair dealing cause of action is sustained with ten days leave to amend.

Directors of an HOA Board may be held individually liable when they mismanage or fail to properly manage the HOA.

"We think that here, the failure of the initial Association directors to exercise supervision which permits mismanagement or non-management is an independent ground for the breach of fiduciary duty by the Developer during the initial period of the Association, when the

Developer and its employees controlled the Association. ¶ Here, the initial directors and officers of the Association had a fiduciary relationship to the homeowner members analogous to that of a corporate promoter to the shareholders. These duties take on a greater magnitude in view of the mandatory association membership required of the homeowner. We conclude that since the Association's original directors (comprised of the owners of the Developer and the Developer's employees) admittedly failed to exercise their supervisory and managerial responsibilities to assess each unit for an adequate reserve fund and acted with a conflict of interest, they abdicated their obligation as initial directors of the Association to establish such a fund for the purposes of maintenance and repair. Thus, the individual initial directors are liable to the Association for breach of basic fiduciary duties of acting in good faith and exercising basic duties of good management." (Emphasis added.) (Raven's Cove Townhomes, Inc. v. Knuppe Development Co. (1981) 114 Cal.App.3d 783, 800–801.)

"Directors of nonprofit corporations such as the Association are fiduciaries who are required to exercise their powers in accordance with the duties imposed by the Corporations Code. (*Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 799, 171 Cal.Rptr. 334.) This fiduciary relationship is governed by the statutory standard that requires directors to exercise due care and undivided loyalty for the interests of the corporation. (*Mueller v. MacBan* (1976) 62 Cal.App.3d 258, 274, 132 Cal.Rptr. 222; Corp.Code, § 309, subd. (a), § 7231, subd. (a); 6 Witkin, Summary of Cal.Law, *supra,* § 80, p. 4378.)" (Frances T. v. Village Green Owners Assn. (1986) 42 Cal.3d 490, 513.)

The breach of fiducial duty cause of action alleges: By intentionally ignoring the provisions of the Belford Estates HOA C,C,&Rs and misrepresenting the actions of the governing members of the HOA, the Belford Estates HOA has breached their duty of care to a member of the Association. (Emphasis added.) (1st Amended Complaint, paragraph 28.)

While the allegations set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant Belford Estate HOA of the nature, source, and extent of the breach of fiduciary duty cause of action asserted against it, the allegations are insufficient to set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to reasonably place defendant Shoff on notice that the breach of fiduciary duty cause of action is being asserted against him.

The demurrer to the breach of fiduciary duty cause of action is sustained with ten days leave to amend.

Defendant's Motion to Strike Portions of 1st Amended Complaint.

Defendants move to strike the 1st amended complaint's prayer number 8 for declaratory and injunctive relief from the provisions of the Belford Estates HOA C,C,&Rs (1st Amended Complaint, page 7, lines 14-15.) on the ground that the prayer is improper, irrelevant, and/or not available in law for the court to grant.

Plaintiff opposes the motion on the ground that the face of the 1st amended complaint does not show that the relief sought is improper, irrelevant, and not available in law for the court to grant.

Defendants replied to the opposition.

Motion to Strike Principles

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ¶ (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. ¶ (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code of Civil Procedure, § 436.)

"An immaterial allegation in a pleading is any of the following: ¶ (1) An allegation that is not essential to the statement of a claim or defense. ¶ (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense. ¶ (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint." (Emphasis added.) (Code of Civil Procedure, § 431.10(b).)

"An "immaterial allegation" means "irrelevant matter" as that term is used in Section 436." (Code of Civil Procedure, § 431.10(c).)

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

"A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true. (See *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255, 79 Cal.Rptr.2d 747 [an order striking punitive damages allegations is reviewed de novo].)" (Blakemore v. Superior Court (2005) 129 Cal.App.4th 36, 53.)

"We emphasize that such use of the motion to strike should be cautious and sparing. We have no intention of creating a procedural "line item veto" for the civil defendant. However, properly used and in the appropriate case, a motion to strike may lie for purposes discussed in this opinion." (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1683.)

The complaint does not allege a cause of action for declaratory relief seeking to enjoin the operation of a specific C,C,&R against plaintiff; and the facts alleged are insufficient when taken as true for the purposes of the motion to strike to support injunctive relief that exempts

plaintiff from all provisions of the Belford Estates HOA C,C,&Rs. The motion to strike is granted. In an abundance of caution the court grants ten days leave to amend.

TENTATIVE RULING # 12: DEFENDANTS' DEMURRER TO THE BREACH OF CONTRACT CAUSE OF ACTION IS OVERRULED. DEFENDANTS' DEMURRERS TO THE FRAUD, BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AND BREACH OF FIDUCIARY DUTY CAUSES OF ACTION ARE SUSTAINED WITH TEN DAY LEAVE TO AMEND. DEFENDANTS' MOTION TO STRIKE IS GRANTED WITH TEN DAYS LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-

services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

13. GROCERY OUTLET v. PGO, INC. 22CV0961

Hearing Re: Preliminary Injunction.

Plaintiff filed an action against defendant asserting causes of action arising from plaintiff's claim that it validly terminated its independent operator agreement with defendants after notice of various defaults in performance of the agreement. Plaintiff applied for a TRO and preliminary injunction that would, among many other things, enjoin defendants from operating the market, prohibit defendants from interfering with the requirements for transition of the market to a new independent operator, and effectively evict defendants from the market location. Defendants depict defendants' possessory interest as a tenancy at sufferance and not a leasehold.

Plaintiff argues that the plaintiff has submitted sufficient evidence by means of declarations and authenticated documents to establish a likelihood that plaintiff will prevail on its causes of action asserted against plaintiff due to defendants' defaults under the independent operator agreement that entitled plaintiff to terminate the agreement and demand that the defendants' occupancy of the market and its contents transition from defendants to the new independent operator by August 2, 2022; plaintiff will suffer irreparable harm by defendants' continued operation of the store while this action remains pending; and plaintiff will suffer irreparable harm in the form of threatened irreparable harm to Grocery Outlet Bargain Markets everywhere as plaintiff is unable to access the Placerville store to ensure defendants operate properly and do not waste, divert, or damage plaintiff's property between now and the August 2, 2022 changeover date; the success of the Placerville store depends on customer goodwill and desire to return to that store location out of habit and loyalty, and any disruption to the store can negatively impact desire to return; and Grocery Outlet has already experienced injury to its brand and business goodwill due to defendants' past breaches, including numerous brand

standards violations, unsafe conditions at the store, not complying with restocking and merchandising duties, and keeping a dirty store, as well as anticipated further defaults.

At the time this ruling was prepared, there was no opposition in the court's file.

A preliminary injunction shall not be granted without notice to the opposing parties. (Code of Civil Procedure, § 527(a).)

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." (Code of Civil Procedure, § 526(a).)

The general purpose of such an injunction is to preserve the status quo until there is a final determination of the matter on the merits. The term "status quo" has been defined to include the last actual peaceable, uncontested status which preceded the pending controversy. (Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995.)

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil

Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

"It is said: "To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should (it) be exercised in a doubtful case. . . ." (*Willis v. Lauridson*, 161 Cal. 106, 117, 118 P. 530, 535; *West v. Lind*, 186 Cal.App.2d 563, 569, 9 Cal.Rptr. 288; *Mallon v. City of Long Beach*, 164 Cal.App.2d 178, 190, 330 P.2d 423.)" (Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148.)

"The plaintiff bears the burden of presenting facts establishing the requisite reasonable probability: "[T]he drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury." (*Ancora–Citronelle Corp. v. Green, supra,* 41 Cal.App.3d at p. 150, 115 Cal.Rptr. 879.)" (Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.)

"The trial court considers two interrelated factors when deciding whether to issue preliminary injunctions: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286, 219 Cal.Rptr. 467, 707 P.2d 840; *IT Corp. v. County of Imperial, supra,* 35 Cal.3d at pp. 69–70,

196 Cal.Rptr. 715, 672 P.2d 121.) However, before the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable injury (6 Witkin, Cal.Procedure (3d ed. 1985) Provisional Remedies, § 254; *E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373, 106 P.2d 1) due to the inadequacy of legal remedies. (6 Witkin, *op. cit. supra,* § 253.)" (Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138.)

""To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis, supra,* 30 Cal.4th at p. 554, 133 Cal.Rptr.2d 648, 68 P.3d 74; see generally Code Civ. Proc. § 526, subd. (a)(2) [preliminary injunction may issue when it appears the plaintiff would suffer great or irreparable injury from the commission or continuance of some act during the litigation].) While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, the plaintiff are "not required to wait until they have suffered *actual harm* before they apply for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292, 240 Cal.Rptr. 872, 743 P.2d 932, italics added; accord, *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526, 179 Cal.Rptr. 907, 638 P.2d 1304 [injunctive relief is available where the injury sought to be avoided is " 'actual or threatened' "]; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46, 115 Cal.Rptr. 746 [same].) ¶ If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: "(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or

nonissuance of the injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion. (*Ibid.*). (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463, 47 Cal.Rptr.3d 147.) However, [t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, [such as when the meaning of a contract or a statute are at issue,] our review is de novo.' " (*City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, 1428, 138 Cal.Rptr.3d 332; *Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 512, 21 Cal.Rptr.2d 578.)" (Costa Mesa City Employees' Assn. v. City of Costa Mesa (2012) 209 Cal.App.4th 298, 305–306.)

An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. (See Brownfield v. Daniel Freeman Marina Hospital (1989) 208 Cal.App.3d 405, 410.)

""Irreparable harm" is a cornerstone of the availability of another provisional remedy, injunctive relief (§ 526, subd. (a)(2)), a provisional remedy also expressly allowed by section 1281.8. In the context of injunctions, insolvency or the inability to otherwise pay money damages is a classic type of irreparable harm. (*Leach v. Day* (1865) 27 Cal. 643, 646; *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890, 24 Cal.Rptr.2d 892.) A close examination of section 1281.8 confirms that both insolvency and the inability to otherwise pay damages are appropriate measures of irreparable harm that might render an arbitration award ineffectual when a writ of attachment is sought." (California Retail Portfolio Fund GmbH & Co. KG v. Hopkins Real Estate Group (2011) 193 Cal.App.4th 849, 857.)

A trial court's decision on a motion for preliminary injunction is not a adjudication of the ultimate rights in controversy (Association for Los Angeles Deputy Sheriffs v. County of Los Angeles (2008) 166 Cal.App.4th 1625, 1634.); the order is not a determination of the merits of the case; and the order may not be given issue-preclusive effect with respect to the merits of the action (Upland Police Officers Ass'n v. City of Upland (2003) 111 Cal.App.4th 1294, 1300.).

With the above-cited principles in mind the court will rule on the motion for preliminary injunction.

- Service of Notice

Where the order to show cause is issued without a temporary restraining order, the court may hear the matter, provided if the moving and opposing papers are served within the time period required by Code of Civil Procedure, § 1005. (Code of Civil Procedure, § 527(f)(1).)

Within 5 days of issuance of the TRO, or within two days of the hearing, whichever is earlier, a party obtaining the TRO must serve the opposing parties a copy of the complaint, the OSC, and the points and authorities in support of the application for the TRO. (Code of Civil Procedure, § 527(d)(2).)

"A party requesting a preliminary injunction may give notice of the request to the opposing or responding party either by serving a noticed motion under Code of Civil Procedure section 1005 or by obtaining and serving an order to show cause (OSC). An OSC must be used when a temporary restraining order (TRO) is sought, or if the party against whom the preliminary injunction is sought has not appeared in the action. If the responding party has not appeared, the OSC must be served in the same manner as a summons and complaint." (Rules of Court, Rule 3.1150(a).)

The court notes that there is no proof of service of the summons and complaint on defendants and, therefore, no response from defendants to the compliant in the court's file.

Plaintiff chose the ex parte application for TRO method. Therefore, issuance and service of an OSC Re: Preliminary Injunction is required.

The proof of service declares that defendants were served notice of the July 29, 2022 ex parte hearing on the application for TRO and preliminary injunction by email and overnight mail on July 20, 2022. Defendants appeared in pro per at the July 29, 2022 hearing. The court heard oral argument of the parties and continued the hearing to August 12, 2022 without issuing a TRO and without issuing the proposed TRO/OSC. The court directed that any supplemental documents were due July 29, 2022; opposition as due on August 5, 2022; and the reply was due on August 9, 2022.

Supplemental documents were filed by plaintiff on July 29, 2022. The proof of service declares that the supplemental declaration and supplemental exhibits were served on defendants by overnight mail and email on July 29, 2022.

On August 5, 2022 defendants submitted an ex parte request to extend the time to file and serve an opposition in order to allow for defendants to retain counsel and file an opposition. The ex parte application was denied. There was no opposition in the court's file at the time this ruling was prepared.

There is no OSC issued and served. Therefore, plaintiff would be deprived of procedural due process if the court would move forward with a hearing on the merits of the preliminary injunction.

The court does find that sufficient evidence has been presented by plaintiff to justify issuance of an OSC Re: Preliminary Injunction. Appearances are required to set a new hearing date and briefing schedule. Plaintiff is to submit an amended OSC that does not include a TRO and serve the defendants with the OSC.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 12, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

14. PETITION OF SEQUOIA COMPANIES LLC VS BRIGHTHOUSE LIFE INSURANCE 22CV0743

TENTATIVE RULING # 14: THE PETITION IS GRANTED. NO APPEARANCES REQUIRED UNLESS REQUESTED.