1. MURRAY v. PANNELL 22UD0337

Demurrer to Complaint.

Plaintiff filed an action for unlawful detainer seeking possession of the property and a judgment for past due rent in the amount of $20,400.

Defendant demurs to the complaint on the ground that the three day notice to pay or quit stating that $20,400 was due and owing for June 2021 through September 2021 grossly overstates the amount due and owing, thereby making the three day notice fatally defective on its face and, therefore, the notice can not support an action for unlawful detainer.

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

Failure to Execute Pleading

"Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." (Emphasis added.) (Code of Civil Procedure, § 128.7(a).)

The court brings to the defendant's attention that the defendant failed to execute the notice of hearing and demurrer that were filed with the court on November 4, 2022, which violates Section 128.7(a). Defendant needs to correct this defect in the moving papers, or the demurer is subject to being stricken.

Notice of Hearing

The caption page and notice fails to state the date and time for hearing the demurrer and the proof of service is blank, leaving the court with no proof of service of the defective notice of hearing and demurrer on the plaintiff.

It would violate the fundamental principles of due process to rule on the demurrer without sufficient proof that plaintiff was served the demurrer and a notice of hearing that is adequate to provide plaintiff with notice of the hearing and an opportunity to respond.

The court is inclined to continue the hearing on this matter to allow defendant to address the deficiencies of the failure to execute the notice and demurrer and failure to provide proof of service of notice of the hearing and the demurrer on plaintiff. Defendant is required to appear and advise the court when these deficiencies will be remedied. If plaintiff fails to appear and advise the court, the demurrer will be denied without prejudice due to failure of proof of service and stricken as failure to comply with Code of Civil Procedure, § 128.7(a).

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. COUNTY OF EL DORADO v. WALDOW 21CV0122

Motion to Withdraw as Attorney of Record for Defendant Waldow.

On September 2, 2022 the court granted counsel's motion to be relieved as counsel of record for defendant. The papers did not specify which defendant. Apparently this renewed motion corrects that error in that this motion only applies to defendant Waldow.

The court notes that the proposed order fails to identify defendant Waldow as the client that counsel is relieved as counsel of record and must be corrected prior to entry.

Defense counsel did not appear at the last hearing on November 4, 2022. Defendant Waldow was present in court at the hearing. An amended proposed order not having been submitted, the court ordered the hearing continued to December 2, 2022, directed defense counsel to appear for defendant unless and until she has been relieved as counsel for defendant, and directed defense counsel to appear to finalize the status of this motion. The November 4, 2022 minute order was served by mail on to plaintiff's counsel, defense counsel and defendant. Although defendant's mail was returned as undeliverable, she had notice of the continued hearing as she was present in court when the matter was continued.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. AUGER v. PACIFIC COACHWORKS PC-20210031

Plaintiff's Motion to Quash Deposition Subpoena of Non-Party.

TENTATIVE RULING # 3: THE MOTION HAVING BEEN WITHDRAWN, THIS MATTER IS DROPPED FROM THE CALENDAR.

4. MATTER OF TRUONG 22CV1453

OSC Re: Name Change.

The mandated CLETS report is not in the court's file. (See Code of Civil Procedure, § 1279.5(f).)

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. MATTER OF KATE G. 22CV1420

Petition to Approve Compromise of Disputed Claim of Minor.

The petition states the minor sustained injuries in a motor vehicle collision consisting of concussion, headache, nausea, blurry vision, sight and sound sensitivity, and c-spine strain. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $25,000.

The petition states the minor incurred $12,448.20 in medical expenses for treatment in the emergency room, follow-up visits and physical therapy; and the amount due on the bills was reduced and the remaining amount paid by the minor's health insurer. Petitioner states in the verified petition at paragraphs 12.b.(2)(f)(i) and 12.b.(5)(a)(i) that no reimbursement is being sought by the insurer and there are no statutory or contractual liens for payment of the minor's medical expenses. There are copies of the bills substantiating the claimed medical expenses attached to the petition as required by Local Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered. There is no current doctor's report concerning the minor's condition and prognosis of recovery as required by Local Rule 7.10.12A.(3).

The petitioning parent received assistance from counsel who became concerned with the matter at the instance of the respondent's insurance carrier. Therefore, attorney's fees and costs are not claimed.

The entire settlement amount of $25,000 is to be deposited into a blocked account.

Pursuant to Rules of Court, Rule 7.952(a) the petitioner and the minor are required to appear at hearings on petitions to approve minor compromises, unless the court dispenses with the requirement upon finding good cause.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. IN RE: J.G. WENTWORTH ORIGINATIONS, LLC. 22CV1611

Petition to Approve Transfer of Payment Rights.

In settlement of litigation a structured settlement with payments for life was accepted. The payee has agreed to sell 248 monthly payments due and payable beginning on May 15, 2039 and ending on December 15, 2059. This totals $182,073.72 in payments, which the petitioner states has a present value of $63,365.87. In exchange, the payee will be paid $2,000. The petition states that the payee has previously obtained court approval for the sale of payments from the structured settlement annuity on 20 occasions from August 2015 through May 2022.

While the payee submitted a declaration in support of the petition, the declaration does not address the factors set forth in Insurance Code, §10139.5(b). At the time this ruling was prepared, the payee had not submitted a declaration in support of the petition addressing the factors set forth in Insurance Code, §10139.5(b).

The petition is not verified.

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).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) 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 his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

"When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents, the court shall consider the totality of the circumstances, including, but not limited to, all of the following: ¶ (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account the payee's age, mental capacity, legal knowledge, and apparent maturity level. ¶ (2) The stated purpose of the transfer. ¶ (3) The payee's financial and economic situation. ¶ (4) The terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. ¶ (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the

payee still needs those future payments to pay for that future care and treatment. ¶ (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. ¶ (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. ¶ (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee's future financial obligations for maintenance and support of the payee's dependents, specifically including, but not limited to, the payee's child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the court's consideration. ¶ (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the payee's stated objectives, are fair and reasonable. ¶ (10) Whether the payee completed previous transactions involving the payee's structured settlement payments and the timing and size of the previous transactions and whether the payee was satisfied with any previous transaction. ¶ (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted

structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. ¶ (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. ¶ (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Insurance Code, §10139.5(b).)

Since there was no declaration by the payee in support of the petition addressing the factors set forth in Insurance Code, §10139.5(b) in the court's file at the time this ruling was prepared, the court has no evidence to consider as to whether the factors enumerated above justify findings that support granting the petition.

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 5 calendar days for mailing by U.S. Mail. (Insurance Code, §§ 10139.2 and 10139.5(f)(2).).)

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).)

At the time this ruling was prepared, there were no proofs of service in the court's file declaring 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.

The court can not rule on the merits of the petition absent adequate proof of service on the required interested parties and the payee providing a declaration in support of the motion addressing the factors set forth in Insurance Code, §10139.5(b).

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. IN RE: ODYSSEA-ABE 83, LLC 22CV1472

Petition to Approve Transfer of Payment Rights.

In settlement of litigation there was an agreement to accept a structured settlement for monthly payments for life. Payee has agreed to sell 102 monthly payments commencing on May 1, 2023 through and including April 1, 2038. This totals $243,094 in payments, which the petitioner states has a present value of $165,596.56. In exchange, payee will be paid $22,743.91.

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).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) 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 his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

"When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents, the court shall consider the totality of the circumstances, including, but not limited to, all of the following: ¶ (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account the payee's age, mental capacity, legal knowledge, and apparent maturity level. ¶ (2) The stated purpose of the transfer. ¶ (3) The payee's financial and economic situation. ¶ (4) The terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. ¶ (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the payee still needs those future payments to pay for that future care and treatment. ¶ (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. ¶ (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee

sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. ¶ (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee's future financial obligations for maintenance and support of the payee's dependents, specifically including, but not limited to, the payee's child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the court's consideration. ¶ (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the payee's stated objectives, are fair and reasonable. ¶ (10) Whether the payee completed previous transactions involving the payee's structured settlement payments and the timing and size of the previous transactions and whether the payee was satisfied with any previous transaction. ¶ (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. ¶ (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the

court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. ¶ (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Insurance Code, §10139.5(b).)

A customer service representative submitted a declaration containing hearsay information purportedly told to the representative by the payee that is offered for the court's consideration and review of the factors set forth in Insurance Code, §10139.5(b).

Inasmuch as there was no declaration by the payee in support of the petition addressing the factors set forth in Insurance Code, §10139.5(b) in the court's file at the time this ruling was prepared, the court has no admissible evidence to consider as to whether the factors enumerated above justify findings that support granting the petition.

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).)

"(g) "Interested parties" means, with respect to a structured settlement agreement, the payee, the payee's attorney, any beneficiary irrevocably 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).)

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 on November 4, 2022.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. MATTER OF THE SEXTON FAMILY TRUST 22CV1390

Petition to Enforce Money Judgment Against Trust Beneficiary.

TENTATIVE RULING # 8: THE PETITION HAVING BEEN DISMISSED WITHOUT PREJUDICE UPON PETITIONER'S REQUEST ON OCTOBER 28, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

9. MATTER OF SHILTS 22CV1452

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).

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. MATTER OF POTTER 22CV1451

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).

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. CONCEPCION v. MIN 22UD0283

Motion to Quash Service of Summons and Complaint or to Strike the Complaint.

On October 3, 2022 plaintiffs filed a motion to quash service, or, in the alternative, to strike the complaint on the grounds that the plaintiffs were not personally served the complaint, the complaint filed is an obsolete form complaint, the complaint was not verified as mandated by Code of Civil Procedure, § 1166(a)(1), and the Judicial Council Form UD-101 mandatory cover sheet and supplemental allegations was not verified.

On October 24, 2022 defendants filed a motion to strike the complaint set for hearing on December 16, 2022. Defendant Audrey Min's declaration in support of the motion admits that on October 16, 2022 she was served the summons, complaint, and mandatory cover sheet.

The motion to quash service having been rendered moot by the subsequent admitted service on defendant Audrey Min and the subsequent filing and service on the plaintiff of the notice of the December 16, 2022 hearing on a motion to strike the complaint and the moving papers, this matter is dropped from the calendar as moot.

TENTATIVE RULING # 11: THE MOTION TO QUASH SERVICE HAVING BEEN RENDERED MOOT BY THE SUBSEQUENT ADMITTED SERVICE ON DEFENDANT AUDREY MIN AND THE SUBSEQUENT FILING AND SERVICE ON PLAINTIFFS OF THE NOTICE OF THE DECEMBER 16, 2022 HEARING ON A MOTION TO STRIKE THE COMPLAINT AND THE MOVING PAPERS, THIS MATTER IS DROPPED FROM THE CALENDAR AS MOOT.

12. LACOURT v. CHECK INTO CASH OF CALIFORNIA, INC. 22CV0129

Plaintiff's Motion to Set Aside and Vacate Order Staying Action Pending Arbitration.

On August 8, 2022, upon stipulation of the parties, the court entered an order staying this action pending arbitration and retaining jurisdiction to confirm or enforce any award upon petition of any party.

Plaintiff moves to vacate the court's order staying this action pending arbitration, order defendants to file their answer within 15 days or be held in default, and to impose monetary sanctions on defendants in the amount of $3,525 for reasonable costs and attorney fees incurred to bring the motion. Plaintiff asserts as the sole ground to grant the motion that defendants failed to timely pay their portion of the arbitration fees, thereby materially breaching the arbitration agreement and waiving their right to compel arbitration as a matter of law as set forth in the provisions of Code of Civil Procedure, §§ 1281.97 and 1281.98.

Defendants Check Into Cash of California, Inc. and Ferer oppose the motion on the following grounds: the stipulation to arbitrate agreed to arbitrate the dispute pursuant to the terms of the arbitration agreement plus additional terms set forth in the stipulation and plaintiff violated a term of the arbitration agreement by failure to properly initiate the arbitration pursuant to the applicable terms of the arbitration provision (Arbitration Clause, Paragraph 9.d.) by not submitting to defendant a demand for arbitration personally executed by plaintiff and delivery to the Company at a specified address in Tennessee, to the attention of the General Counsel, at the same time as the demand for arbitration was filed by the AAA and, therefore, Section 1281.97 does not apply, because that section is only triggered after a claimant meets the filing requirements to initiate arbitration; inasmuch as the arbitration was not properly initiated, the AAA invoice was sent to the wrong attorney; despite plaintiff's failure

to properly initiate the arbitration proceeding, defendants timely paid the arbitration fees and costs invoiced within 30 days of the date the fees were due on September 27, 2022 because AAA designated the date to pay the invoice was September 6, 2022, even though it inconsistently stated the invoice was due upon receipt; neither Gallo v. Wood Ranch, USA, Inc. (2022) 81 Cal.App.5th 621, nor Espinoza v. Superior Court (2022) 83 Cal.App.5th 761, dictate that the due date of the payment was August 23, 2022 when the AAA letter was sent and not the date payment was due on or before September 6, 2022; should the court find that the fees were not timely filed, the court should grant relief from that failure pursuant to Code of Civil Procedure, § 473(b); Section 1281.97 is inapplicable, because defendant was not the 'drafting party" as both defendant and plaintiff drafted the terms of the stipulation and Sections 1281.97 and 1287.98 only apply to pre-dispute arbitration agreements and not post-dispute stipulations; the parties did not agree to incorporate the California Arbitration Act (CAA) into their arbitration agreement and, therefore, the case is governed by the Federal Arbitration Act (FAA); the FAA preempts the CAA; the issue of whether the arbitration agreement was breached is an issue for the arbitrator to decide; and the request for sanctions should be denied as excessive.

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

The letter from the American Arbitration Association (AAA) regarding the filing of the arbitration and payment of administrative fees expressly states: " We have received the employee's portion of the filing fee in the amount of $300. Accordingly, we request that the employer pay its share of the filing fee in the amount of $1,900 on or before September 6, 2022. Upon receipt of the balance of the filing fee, AAA with proceed with arbitration." (Emphasis added.) (Declaration of James Jones in Opposition to Motion, Exhibit C - AAA Letter dated August 23, 2022, page 2, Second paragraph.)

The letter from AAA further stated: "…Payment is due on upon [sic] receipt of this letter. As this arbitration is subject to California Code of Civil Procedure, § 1281.97, payment must be received by September 22, 2022 or the AAA will close the parties' case…"(Declaration of James Jones in Opposition to Motion, paragraphs 4 and 6; and Defense Exhibits A and C - AAA Letter dated August 23, 2022, page 2, Third paragraph.)

"(a)(1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under Section 1281.2. ¶ (2) After an employee or consumer meets the filing requirements necessary to initiate an arbitration, the arbitration provider shall immediately provide an invoice for any fees and costs required before the arbitration can proceed to all of the parties to the arbitration. The invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt." (Emphasis added.) (Code of Civil Procedure, § 1281.97(a).)

"(a)(1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the

arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach." (Emphasis added.) (Code of Civil Procedure, § 1281.98(a)(1).)

An exception to the statutory mandate to compel arbitration pursuant to an agreement exists where the right to compel arbitration has been waived by the petitioner. (Code of Civil Procedure, § 1281.2(a).)

"(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may do either of the following: ¶ (1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction. ¶ (2) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration." (Code of Civil Procedure, § 1281.97(b).)

"(d) If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, the court shall impose sanctions on the drafting party in accordance with Section 1281.99." (Code of Civil Procedure, § 1281.97(d).)

"(a) The court shall impose a monetary sanction against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach." (Code of Civil Procedure, § 1281.99.)

The Second District Court of Appeal affirmed the trial court's order granting plaintiff's motion to vacate the prior order compelling arbitration on the ground that defendant failed to timely pay its portion of the arbitration fees. The Second District was faced with the following facts: "On October 20, 2020, AAA sent a letter to counsel for both parties, informing them that plaintiff's "portion of the initial filing fee is $300," that it was due by October 27, 2020, and that

"payment should be submitted by credit card or electronic check" using a "secured paylink" that would be "forthcoming with instructions." Plaintiff paid the $300 the very same day. ¶ The next day, on October 21, 2020, AAA sent a letter to counsel for both parties, informing them that plaintiff had paid her fees, that Wood Ranch now had to "pay its share of the filing fee in the amount of $1,900," and that the fee was due by November 4, 2020. The letter included this admonition: ¶ **As this arbitration is subject to California Code of Civil Procedure 1281.97 and 1281.98, payment must be received by December 4, 2020 [that is, 30 days after the November 4 deadline] or the AAA will close the parties' case. The AAA will not grant any extensions to this payment deadline.** (Boldface and underline in original.) Like the letter requesting payment from plaintiff, this letter also specified that Wood Ranch's payment "should be submitted by credit card or electronic check" and that "[a] secured paylink" would "be forthcoming." ¶ The November 4 due date came and went without any payment from Wood Ranch. ¶ On November 9, 2020, AAA sent a further letter to counsel for both parties reminding Wood Ranch that it had not yet paid and informing Wood Ranch, again in boldface, that "**in accordance with California Code of Civil Procedure 1281.97 and 1281.98, the AAA will close its case on December 4, 2020 if payment is not received.**" ¶ All of these letters were sent to a partner of the law firm representing Wood Ranch, but the partner—for reasons unknown—never forwarded any of this correspondence to the law firm associate handling the case on a day-to-day basis or to the assigned law firm secretary." (Emphasis in original.) Gallo v. Wood Ranch USA, Inc. (2022) 81 Cal.App.5th 621, 631–632.)

The issues raised and discussed by the appellate court in the opinion involved the following: "Wood Ranch argues that the trial court erred in vacating its previous order compelling arbitration because, in its view, the statutes on which the order vacating arbitration is based—sections 1281.97 and 1281.99—are preempted by the FAA." (Gallo v. Wood Ranch USA,

Inc. (2022) 81 Cal.App.5th 621, 632–633.) The appellate court stated with regards to its review of the trial court decision: "We will review the trial court's order de novo: As a general matter, an order vacating an order compelling arbitration is the functional equivalent of an order denying a petition to compel arbitration in the first place because both divert a case into court rather than arbitration; because the former is reviewed de novo (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9, 36 Cal.Rptr.2d 581, 885 P.2d 994), so should the latter. Further, because the propriety of the order in this case rests on questions of federal preemption as well as the application of undisputed facts to the law, de novo review is particularly appropriate. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1089, fn. 10, 72 Cal.Rptr.3d 112, 175 P.3d 1170 ["federal preemption presents a pure question of law" warranting "de novo standard of review"]; *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912, 236 Cal.Rptr.3d 109, 422 P.3d 552 ["the application of law to undisputed facts ordinarily presents a legal question that is reviewed de novo"].)" (Gallo v. Wood Ranch USA, Inc. (2022) 81 Cal.App.5th 621, 633.) The appellate court rejected defendant's arguments regarding FAA preemption. (See Gallo v. Wood Ranch USA, Inc. (2022) 81 Cal.App.5th 621, 643–647.)

Gallo, supra, does not stand for the proposition that under all circumstances, the 30 day limitation to pay arbitration costs and fees commences to run on the date the notice of arbitration commencement and request for payment of fees and costs is sent. In fact, the date the AAA stated as the deadline for receipt of payment was stated to be the commencement date for the 30 day limitation period. The Appellate Court did not consider or rule on any issue related to what is the "due date" under the circumstances presented in this case and when the due date expires where the AAA states that payment must be made on or before a certain date.

"Cases do not stand for propositions that were never considered by the court. (*Tosco Corp. v. General Ins. Co.* (2000) 85 Cal.App.4th 1016, 1021, 102 Cal.Rptr.2d 657.)" (Mares v. Baughman (2001) 92 Cal.App.4th 672, 679.)

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

The Second District Court of Appeal in its opinion in Espinoza v. Superior Court of Los Angeles County (2022) 83 Cal.App.5th 761 granted the plaintiff's petition for writ of mandate directing the trial court to reverse its decision denying plaintiff's motion to vacate an order compelling the trial court to lift its stay of the case pending arbitration as defendant did not timely pay its arbitration fees. The following facts were before the appellate court: "On May 24, 2021, the arbitration provider sent the parties an initial invoice for an administrative fee and telephonic arbitration management conference, with a due date of May 31, 2021. ¶ On July 1, 2021, the arbitration provider confirmed to plaintiff's counsel that it had yet to receive payment from defendant. Plaintiff then filed a motion in the trial court under sections 1281.97 and 1281.98 contending defendant had materially breached the arbitration agreement by failing to pay the invoice within 30 days of the due date for payment. Plaintiff sought an order lifting the litigation stay, allowing her claims to proceed in court, and imposing monetary and evidentiary sanctions on defendant under section 1281.99." (Emphasis added.) (Espinoza v. Superior Court of Los Angeles County (2022) 83 Cal.App.5th 761, 772.)

The Second District found that under normal circumstances the 30 day limitation to pay the arbitration fees commenced upon receipt of the notice to pay where payment is due upon receipt. The appellate court stated "Section 1281.97 further requires that the arbitration

provider "immediately provide an invoice for any fees and costs," which is "due upon receipt" "absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs." (§ 1281.97, subd. (a)(2).) [Footnote omitted.] Thus, unless the parties expressly agree to the contrary, the drafting party's receipt of the invoice triggers the 30-day clock under section 1281.97, subdivision (a)(1). [FN 6] ¶ FN 6. The invoice in the instant case, issued May 24, did not state it was due upon receipt, but rather listed a due date of May 31. The parties do not take issue with that due date, and we do not address it further. ¶ In the event the drafting party does not pay the invoice within the 30 days, thus materially breaching the arbitration agreement under section 1281.97, subdivision (a)(1), the employee or consumer may "[w]ithdraw the claim from arbitration and proceed in a court of appropriate jurisdiction," or "[c]ompel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration." (§ 1281.97, subd. (b).)" (Espinoza v. Superior Court of Los Angeles County (2022) 83 Cal.App.5th 761, 774.)

The appellate court in Espinoza, supra, recognized that the circumstances before the court involved an invoice that stated a specific due date and no due upon receipt statement in the invoice letter. The appellate court was not faced with a situation where conflicting payment instructions were provided by the arbitration company invoice. The appellate court in Espinoza did not consider and rule on an issue of whether an invoice from the arbitration company setting a specific date for payment that is after the date the invoice is sent is when the 30 day limitation commences. Therefore, the Espinoza appellate opinion is not authority for the point or proposition that the due date is upon receipt even where the invoice expressly stated the payment must be paid on or before a specified date after the invoice was sent and received as the issue was not raised, considered, or resolved therein.

Sections 1281.97(a) and 1281.98(a) expressly provide that if payment of the arbitration fees are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and was waived its right to compel arbitration pursuant to Section 1281.2.

The AAA arbitration notice letter explicitly states that the payment is due on or before September 6, 2022 and that Section 1281.97 controls. AAA injected an ambiguity into its letter by stating the invoice was due upon receipt and then setting forth a due date for payment. It is reasonable for the court and a party receiving the letter to construe the explicit payment instruction provision to pay AAA on or before September 6, 2022 as the "due date". Therefore, AAA erroneously calculated the 30 day limitation to pay the arbitration fees from the date of the letter, August 23, 2022, when AAA stated in the letter that payment was due on or before September 22, 2022. Pursuant to statute, the fees were due to be paid not later than 30 days after the expressly stated due date of September 6, 2022, which was October 6, 2022.

There is evidence that defendant's portion of the arbitration fees was sent UPS Next Day Air on September 26, 2022 and acknowledged as received on September 27, 2022 by email to the parties from the AAA. (Declaration of James Jones in Opposition to Motion, paragraphs 4 and 6; and Exhibits A, C and D.)

The payment of the administrative fee invoiced by the AAA before October 6, 2022 was timely pursuant to the provisions of Sections 128.97 and 1281.98, therefore, defendant is not in material breach of the arbitration agreement, is not in default of the arbitration, defendant has not waived its right to compel arbitration, and the AAA erroneously closed the file due to failure to timely pay the fee imposed on defendant. The motion is denied.

Inasmuch as the fee was timely paid, the court need not and does not reach the remaining issues raised in opposition to the motion.

Plaintiff's Motion to Set Aside and Vacate Order Staying Action Pending Arbitration is denied.

TENTATIVE RULING # 12: PLAINTIFF'S MOTION TO SET ASIDE AND VACATE ORDER STAYING ACTION PENDING ARBITRATION IS DENIED. NO HEARING ON THESE MATTERS 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. 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, DECEMBER 2, 2022 EITHER IN PERSON OR BY ZOOM APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

13. DEPAOLI v. CLARK EQUIPMENT CO. 22CV0693

(1) Defendant Clark Equipment Co.'s Demurrer to the Violation of Business and Professions Code, § 17200 Cause of Action.

(2) Defendant Clark Equipment Co.'s Motion to Strike Portions of the Complaint.

Defendant Clark Equipment Co.'s Demurrer to the Violation of Business and Professions Code, § 17200 Cause of Action.

On May 10, 2022 plaintiff filed an action against defendants asserting various causes of action allegedly arising from the sale of a tractor. The plaintiff asserted causes of action for breach of express warranty, breach of implied warranty of merchantability, and violation of Business and Professions Code, §§ 17200, et seq. against the manufacturer, defendant Clark Equipment Co.

Defendant Clark Equipment Co. demurs to the violation of Business and Professions Code, §§ 17200, et seq. cause of action on the ground that plaintiff has failed to allege sufficient facts to establish that defendant Clark Equipment Co. made the complained of representations concerning the capabilities of the subject tractor such that defendant Clark Equipment Co. can be held liable for unlawful, unfair, *or* fraudulent practices and the allegations of the violation of Business and Professions Code, §§ 17200, et seq. asserted against defendant Clark Equipment Co. are uncertain, vague, ambiguous and unintelligible..

The proofs of service declare that notice of the initial hearing date and the moving papers were served by email to plaintiff's counsel on August 12, 2022 and the amended notice of hearing was served on plaintiff's counsel by email on September 26, 2022. At the time this ruling was prepared, there was no opposition to the demurrer in the court's file.

No papers opposing the demurrer having been filed with the court at least nine court days before the hearing (Code of Civil Procedure, § 1005(b).), the court exercises its discretion to treat the plaintiff's failure to file an opposition as an admission that the demurrer is meritorious and sustains defendant Clark Equipment Co.'s demurrer to the violation of Business and Professions Code, §§ 17200, et seq. cause of action with ten days leave to amend. (See Local Rule 7.10.02C.)

Defendant Clark Equipment Co.'s Motion to Strike Portions of the Complaint.

The motion to strike is dropped from the calendar as moot.

TENTATIVE RULING # 13: DEFENDANT CLARK EQUIPMENT CO.'S DEMURRER TO THE VIOLATION OF BUSINESS AND PROFESSIONS CODE, §§ 17200, ET SEQ. CAUSE OF ACTION IS SUSTAINED WITH TEN DAYS LEAVE TO AMEND. DEFENDANT CLARK EQUIPMENT CO.'S MOTION TO STRIKE PORTIONS OF THE COMPLAINT IS DROPPED FROM THE CALENDAR AS MOOT. NO HEARING ON THESE MATTERS 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. 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, DECEMBER 2, 2022 EITHER IN PERSON OR BY ZOOM APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

14. MATTER OF VALLIAMMAL 22CV1330

OSC Re: Name Change.

The mandated CLETS report is not in the court's file. (See Code of Civil Procedure, § 1279.5(f).)

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

15. PEOPLE v. ANDERSON PCL-20210122

Claim Opposing Forfeiture.

On February 19, 2021 claimant Anderson filed a verified Judicial Council Form MC-200 claim opposing forfeiture of $4,646.52 in response to a notice of administrative proceedings. The proof of service declares that the endorsed claim opposing forfeiture was served by mail on the El Dorado County District Attorney on March 1, 2021.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another

provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such

a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237,

and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(i)(1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470." (Health and Safety Code, § 11488.4(i)(1).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which

offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

On May 10, 2021 the People filed a petition for forfeiture. The proof of service filed on May 14, 2021 declares that claimant's counsel was served the petition for forfeiture by fax on May 11, 2021.

At the August 26, 2022 hearing, the court was advised that the criminal matter was resolved. At the hearing on October 7, 2022 the petitioner and respondent were present by counsel and upon stipulation the court continued the hearing to December 2, 2022.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

16. IN RE: J.G. WENTWORTH ORIGINATIONS, LLC. 22CV1401

Petition to Approve Transfer of Payment Rights.

In settlement of litigation a structured settlement with payments for life was accepted. The payee has agreed to sell 308 monthly payments due and payable beginning on May 15, 2039 and ending on December 15, 2059. This totals $635,981 in payments, which the petitioner states has a present value of $211,162.74. In exchange, the payee will be paid $20,000.

The payee declares; the payee has a spouse and five minor children; the payee earns $1,500 per month; the payee is not subject to any court orders or child support obligations; the payee is currently suffering from financial hardship; the money received will be used to make renovations to the home to add a wheelchair accessible shower, roof repairs, wheelchair repairs, and to install a new power generator; 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 not intended to provide for necessary living expenses; and the payee has previously obtained court approval for the sale of payments from the structured settlement annuity on 21 occasions from January 2016 through May 2022.

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).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) 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 his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

"When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents, the court shall consider the totality of the circumstances, including, but not limited to, all of the following: ¶ (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account the payee's age, mental capacity, legal knowledge, and apparent maturity level. ¶ (2) The stated purpose of the transfer. ¶ (3) The payee's financial and economic situation. ¶ (4) The

terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. ¶ (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the payee still needs those future payments to pay for that future care and treatment. ¶ (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. ¶ (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. ¶ (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee's future financial obligations for maintenance and support of the payee's dependents, specifically including, but not limited to, the payee's child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the court's consideration. ¶ (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the payee's stated objectives, are fair and reasonable. ¶ (10) Whether the payee completed previous transactions involving the payee's structured settlement payments and the timing and

size of the previous transactions and whether the payee was satisfied with any previous transaction. ¶ (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. ¶ (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. ¶ (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Insurance Code, §10139.5(b).)

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).)

"(g) "Interested parties" means, with respect to a structured settlement agreement, the payee, the payee's attorney, any beneficiary irrevocably 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).)

The proof of service in the court's file declares 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 email and overnight mail on October 12, 2022.

Having reviewed the petition and documents filed in support of the petition, absent objections, it appears appropriate to grant the petition.

TENTATIVE RULING # 16: ABSENT OBJECTIONS, THE PETITION 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 BY ZOOM

PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. 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, DECEMBER 2, 2022 EITHER IN PERSON OR BY ZOOM APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

17. PILOT HILL CROSSING HOA v. WILSON 22CV0310

(1) Plaintiff/Cross Defendant Pilot Hill Crossing HOA's Motion to Reclassify Case from Limited Civil to Unlimited Civil.

(2) Plaintiff/Cross-Defendant Pilot Hill Crossing HOA's Motion to Compel Discovery Responses.

Plaintiff/Cross Defendant Pilot Hill Crossing HOA's Motion to Reclassify Case from Limited Civil to Unlimited Civil.

On March 3, 2022 plaintiff Pilot Hill Crossing HOA filed a limited civil action against defendants for the common counts of account stated and open book account to recover $74,466.90 for past due maintenance assessments owed by defendants for the parcels they own in the HOA.

Plaintiff/Cross-Defendant Pilot Hill Crossing HOA moves for the court to reclassify this action from a limited civil action to an unlimited civil action on the following grounds: due to counsel's mistake, inadvertence, or neglect the action was improperly classified as a limited civil action even though the damages sought exceeded $25,000; denying reclassification would limit plaintiff to $25,000 in damages, even though damages exceed $25,000; and it would be unduly prejudicial for plaintiff to be deprived of he opportunity to recover the full amount of damages plaintiff sustained.

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

"The plaintiff, cross-complainant, or petitioner may file a motion for reclassification within the time allowed for that party to amend the initial pleading. The defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party's time to amend or answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the case has been classified in an incorrect jurisdictional classification." (Code of Civil Procedure, § 403.040(a).)

"If a party files a motion for reclassification after the time for that party to amend that party's initial pleading or to respond to a complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied: ¶ (1) The case is incorrectly classified. ¶ (2) The moving party shows good cause for not seeking reclassification earlier." (Code of Civil Procedure, § 403.040(b).)

"If the court grants a motion for reclassification, the payment of the reclassification fee shall be determined, unless the court orders otherwise, as follows: ¶ (1) If a case is reclassified as an unlimited civil case, the party whose pleading causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case or otherwise fails to satisfy the requirements of a limited civil case under Section 85 shall pay the reclassification fee provided in Section 403.060. ¶ (2) If a case is reclassified as a limited civil case, no reclassification fee is required." (Code of Civil Procedure, § 403.040(c).)

"If the court grants an order for reclassification of an action or proceeding pursuant to this section, the reclassification shall proceed as follows: ¶ (1) If the required reclassification fee is paid pursuant to Section 403.060 or no reclassification fee is required, the clerk shall promptly reclassify the case. ¶ (2) An action that has been reclassified pursuant to this section shall not

be further prosecuted in any court until the required reclassification fee is paid. If the required reclassification fee has not been paid within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fee, and the clerk shall promptly reclassify the case as if the fee had been paid as provided in Section 403.060. The fee shall then be a proper item of costs of the party paying it, recoverable if that party prevails in the action or proceeding. Otherwise, the fee shall be offset against and deducted from the amount, if any, awarded to the party responsible for the fee, if that party prevails in the action or proceeding. ¶ (3) If the fee is not paid within 30 days after service of notice of an order of reclassification, the court on its own motion or the motion of any party may order the case to proceed as a limited civil case, dismiss the action or cross- action without prejudice on the condition that no other action or proceeding on the same matters may be commenced in any other court until the reclassification fee is paid, or take such other action as the court may deem appropriate." (Code of Civil Procedure, § 403.040(d).)

"A trial court has authority to conduct a pretrial hearing to obtain information about whether the amount of the judgment will require reclassification. (*Walker v. Superior Court*, supra, 53 Cal.3d at p. 268, 279 Cal.Rptr. 576, 807 P.2d 418.) The *Walker* requirements for determining the amount in controversy formerly applied to the "transfer" of a case from superior to municipal court, and continue to apply when a court makes a determination of the amount in controversy for purposes of "reclassification." A party moving for reclassification should make a noticed motion. (Id. at p. 271, 279 Cal.Rptr. 576, 807 P.2d 418.) A court contemplating ordering reclassification on its own motion must also provide notice to the parties. (Ibid.; *Kent v. Superior Court* (1992) 2 Cal.App.4th 1392, 1394, 4 Cal.Rptr.2d 21.) Whether a party makes a motion or the court raises the jurisdictional issue on its own motion pursuant to section

403.040, subdivision (a), the court must provide "sufficient opportunity to respond and offer reasons why [reclassification] should or should not be ordered." (*Walker v. Superior Court*, supra, 53 Cal.3d at p. 272, 279 Cal.Rptr. 576, 807 P.2d 418.) Even if no hearing is held, before ordering reclassification the court must afford the parties an opportunity to contest reclassification. (Id. at p. 262, 279 Cal.Rptr. 576, 807 P.2d 418; see also Kent v. Superior Court, supra, 2 Cal.App.4th at p. 1394, 4 Cal.Rptr.2d 21.)" (Stern v. Superior Court (2003) 105 Cal.App.4th 223, 230.)

"Regarding valuation of the amount of a future judgment, *Walker* holds that a matter can be transferred (or reclassified) when (1) before trial, the complaint, petition, or related documents make the absence of jurisdiction apparent; or (2) during pretrial litigation, it becomes clear that the matter will "necessarily" result in a verdict below the jurisdictional amount. (*Walker v. Superior Court*, supra, 53 Cal.3d at p. 262, 279 Cal.Rptr. 576, 807 P.2d 418.) [Footnote omitted.]" (Stern v. Superior Court (2003) 105 Cal.App.4th 223, 230-231.)

The complaint on its face requests damages exceeding $25,000, which makes the absence of jurisdiction as a limited civil action readily apparent.

Plaintiff's counsel declares in support of the motion: the amount demanded in the complaint exceeds $25,000; after careful review of the file, he noticed the "Limited" box on the civil case cover sheet filed concurrently with the complaint was mistakenly checked; and this was a mistake, inadvertence, or neglect on his part. (Declaration of Austin Nichter in Support of Motion to Reclassify Case, paragraph 4.)

Absent opposition, plaintiff/cross defendant Pilot Hill Crossing HOA's motion to reclassify case from limited civil case to unlimited civil case is granted.

Plaintiff/Cross-Defendant Pilot Hill Crossing HOA's Motion to Compel Discovery Responses.

Plaintiff/Cross-Defendant Pilot Hill Crossing HOA's counsel declares: on August 12, 2022 form and special interrogatories and requests for production were served on cross-complainant Wilson; and despite a request for responses and production, cross-complainant Wilson failed to provide any responses to the discovery propounded. Plaintiff/Cross-Defendant Pilot Hill Crossing HOA moves to compel answers and production of documents without objections and further requests an award of monetary sanctions in the amount of $2,160 for attorney fees incurred to prepare the meet and confer letter, research and prepare the moving papers, and anticipated fees incurred to review and respond to the opposition.

The proofs of service in the court's file declares that on October 7, 2022 notice of the hearing and copies of the moving papers were served by email on defense counsel.

On November 22, 2022 cross-complainant Wilson filed a notice of non-opposition to the motion and cross-complainant Wilson requested that the sanctions award be reduced to $750

On November 23, 2022 plaintiff/cross-defendant Pilot Hill Crossing HOA filed a reply stating that the amount of sanctions to be awarded should be $2,160.

The party to whom interrogatories and requests for production 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, 2030.270, 2031.260, and 2031.270.) The failure to timely respond waives all objections to the interrogatories and requests and the propounding party may move to compel answers to interrogatories and production of documents. (Code of Civil Procedure, §§ 2030.290 and 2031.300.)

Absent opposition, it appears appropriate under the circumstances to grant the motion to compel answers and production.

Sanctions

Failure to respond to interrogatories and requests for production is a sanctionable misuse of the discovery process. (Code of Civil Procedure, §§ 2023.010(d), 2023.030, 2030.290(c), and 2031.300(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 order cross-complainant Wilson to pay plaintiff/cross-defendant Pilot Hill Crossing HOA the sum of $1,200 in monetary sanctions.

TENTATIVE RULING # 17: ABSENT OPPOSITION, PLAINTIFF/CROSS DEFENDANT PILOT HILL CROSSING HOA'S MOTION TO RECLASSIFY CASE FROM LIMITED CIVIL TO UNLIMITED CIVIL IS GRANTED. PLAINTIFF/CROSS-DEFENDANT PILOT HILL CROSSING HOA'S MOTION TO COMPEL DISCOVERY RESPONSES IS GRANTED. CROSS-COMPLAINANT WILSON IS ORDERED TO SERVE ON PLAINTIFF/CROSS-DEFENDANT PILOT HILL CROSSING HOA RESPONSES TO FORM INTERROGATORIES, SET ONE, AND SPECIAL INTERROGATORIES, SET ONE WITHOUT OBJECTIONS WITHIN TEN DAYS. CROSS-COMPLAINANT WILSON CROSS-COMPLAINANT WILSON IS ALSO ORDERED TO PRODUCE THE DOCUMENTS AND/OR THINGS REQUESTED IN REQUESTS FOR PRODUCTION, SET ONE, WITHOUT OBJECTIONS WITHIN TEN DAYS. CROSS-COMPLAINANT WILSON IS FURTHER ORDERED TO PAY PLAINTIFF/CROSS-DEFENDANT PILOT HILL CROSSING HOA $1,200 IN MONETARY SANCTIONS 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. 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, DECEMBER 2, 2022 EITHER IN PERSON OR BY ZOOM APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

18. QUEEN INDUSTRIES v. THIRTY THREE THIRTY THREE, LLC PC-20200528

Defendant Fishman's Motion to Dismiss Action for Failure to Arbitrate or, in the Alternative, Compel Arbitration.

TENTATIVE RULING # 18: THE ACTION AGAINST DEFENDANT FISHMAN HAVING BEEN VOLUNTARILY DISMISSED UPON REQUEST OF PLAINTIFF ON NOVEMBER 18, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

19. SEDGWICK CLAIMS MANAGEMENT v. CLEAR POINT FINANCIAL GROUP, INC.

PC-20210022

Defendant Clear Point Financial Corp.'s Motion to Compel Deposition of Non-Party.

Plaintiff Sedgwick Claims Management, Inc. for Accredited Surety and Casualty Company, Inc. as Real Party in Interest filed an action for subrogation against defendant Clear Point Financial Corp. seeking recovery for the worker's compensation insurance benefits paid for injuries Mikel Tkachenco sustained while acting in the course and scope of his employment.

Defendant Clear Point Financial Corp. moves to compel non-party Tkachenco to appear at his duly noticed deposition within 20 days of the court's issuance of the order granting the motion. Defendant Clear Point Financial Corp. argues that the motion should be granted for the following reasons: Mikel Tkachenco accepted service by mail of the first deposition notice on February 22, 2022 and failed to appear at his deposition; Mikel Tkachenco referred counsel to his worker's compensation attorney, Mr. Bradley, after Mikel Tkachenco accepted service of the first deposition notice; Mr. Bradley has not appeared as counsel for Mikel Tkachenco in this proceeding; on July 27, 2022 Mikel Tkachenco was personally served a notice of the deposition that was rescheduled to take place on August 18, 2022; Mr. Bradley never contacted defense counsel prior to the August 18, 2022 deposition date; Mikel Tkachenco's testimony is relevant and necessary to defendant's defense and to avoid surprise at trial as he is the person with the most direct knowledge of how he was injured and is a material witness to the chain of events that may have contributed to his injuries; and neither plaintiff, nor Mikel Tkachenco filed any timely objections or a motion to quash the deposition.

The proof of service declares that on September 28, 2022 non-party Mikel Tkachenco was personally served notice of the hearing and the moving papers, Mikel Tkachenco's worker's

compensation counsel was served with a courtesy copy of the notice of hearing and moving papers by mail; plaintiff's counsel was served the notice of hearing and the moving papers by electronic service, and defendant Kamyshin was served notice of the haring and the moving papers by U.S. Mail return receipt requested.

There was no opposition or objection to the deposition being compelled asserted by non-party Mikel Tkachenco in the court's file at the time this ruling was prepared.

Plaintiff Sedgwick Claims Management, Inc. for Accredited Surety and Casualty Company, Inc. as Real Party in Interest (Sedgwick) opposes the motion as unnecessary, unjustified, and the information sought is not relevant to the case for the following reasons: plaintiff has already provided all of the relevant documents and information in this case; additional testimony from Mikel Tkachenco is not necessary and he is not a party to the case; even if Mikel Tkachenco was injured by a co-employee, it is not a material dispute in the case as plaintiff would still be entitled to subrogation for worker's compensation benefits it paid due to Mikel Tkachenco's injury on the job; and only negligence by the employer would reduce such liability.

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

"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).)

"The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Chapter 6 (commencing with Section 2020.010)." (Code of Civil Procedure, § 2025.280(b).)

"(a) Any of the following methods may be used to obtain discovery within the state from a person who is not a party to the action in which the discovery is sought: ¶ (1) An oral deposition under Chapter 9 (commencing with Section 2025.010). ¶ (2) A written deposition under Chapter 11 (commencing with Section 2028.010). ¶ (3) A deposition for production of business records and things under Article 4 (commencing with Section 2020.410) or Article 5 (commencing with Section 2020.510). ¶ (b) Except as provided in subdivision (a) of Section 2025.280, the process by which a nonparty is required to provide discovery is a deposition subpoena." (Code Civil Procedure, § 2020.010.)

"If a subpoena requires the attendance of a witness or the production of books, documents, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." (Code of Civil Procedure, § 1987.1(a).)

"The following persons may make a motion pursuant to subdivision (a): ¶ (1) A party. ¶ (2) A witness. ¶ (3) A consumer described in Section 1985.3. ¶ (4) An employee described in Section 1985.6. ¶ (5) A person whose personally identifying information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, is sought in connection with an underlying action involving that person's exercise of free speech rights." (Code of Civil Procedure, § 1987.1(b).)

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

Scope of Discovery

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

Discovery of evidence and information about how Mikel Tkachenco was injured and the chain of events that may have contributed to his injuries would reasonably assist defendant Clear Point Financial Corp. in evaluating the case, preparing for trial, or facilitating settlement, and/or the information can reasonably lead to admissible evidence concerning whether plaintiff Sedgewick is entitled to subrogation as claimed in the complaint. Evidence of potential co-worker involvement in negligent conduct that could have caused the incident that injured Mikel Tkachenco is not evidence that establishes as a matter of law that there is no other evidence or information that could lead to admissible evidence that would show that something else caused the incident, such as neglect by the employer. Defendant Clear Point Financial Corp. is entitled to inquire as to whether there is such information and/or evidence contrary to plaintiff

Sedgewick's view of the evidence of what happened. The court rejects plaintiff's argument that the motion must be denied as unnecessary, unjustified, and the information sought is not relevant to the case.

Non-Party Mikel Tkachenco not having opposed or objected to being compelled to appear at a deposition to be held within 20 days of the date of the court's order and the court having found his testimony was relevant and fell within the scope of discovery, the court grants the motion and orders non-party Mikel Tkachenco to appear at his deposition on a date set by defendant Clear Point Financial Corp. at least 20 days after the court issues its order and at a time and location selected by defendant Clear Point Financial Corp. Defendant Clear Point Financial Corp. is ordered to personally serve Mikel Tkachenco with a notice of deposition setting forth the date, time and location of the deposition and to serve the notice on the other parties to this action and Mikel Tkachenco's workers compensation attorney by mail or email.

TENTATIVE RULING # 19: THE COURT GRANTS THE MOTION AND ORDERS NON-PARTY MIKEL TKACHENCO TO APPEAR AT HIS DEPOSITION ON A DATE SET BY DEFENDANT CLEAR POINT FINANCIAL CORP. AT LEAST 20 DAYS AFTER THE COURT ISSUES ITS ORDER AND AT A TIME AND LOCATION SELECTED BY DEFENDANT CLEAR POINT FINANCIAL CORP. DEFENDANT CLEAR POINT FINANCIAL CORP. IS ORDERED TO PERSONALLY SERVE MIKEL TKACHENCO WITH A NOTICE OF DEPOSITION SETTING FORTH THE DATE, TIME AND LOCATION OF THE DEPOSITION AND TO SERVE THE NOTICE ON THE OTHER PARTIES TO THIS ACTION AND MIKEL TKACHENCO'S WORKERS COMPENSATION ATTORNEY BY MAIL OR EMAIL. NO HEARING ON THESE MATTERS 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. 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, DECEMBER 2, 2022 EITHER IN PERSON OR BY ZOOM APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

20. PEOPLE v. KELLY PCL-20210332

Claim Opposing Forfeiture.

Claimant Kelly filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: $13,914 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition

under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in

which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the

hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all

parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

At the hearing on August 26, 2022 Mr. Kelly stated he believed the case is resolved. At the hearing on October 7, 2022 the court continued the hearing to December 2, 2022.

TENTATIVE RULING # 20: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 2, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

21. ALL ABOUT EQUINE ANIMAL RESCUE, INC. v. BYRD PC-20200294

(1) Cross-Defendant Georgetown Divide Recreation District's Demurrer to 1st Amended Cross-Complaint.

(2) Cross-Defendant Georgetown Divide Recreation District's Motion to Strike Punitive Damages Allegations from the 1st Amended Cross-Complaint.

TENTATIVE RULING # 21: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 27, 2022 IN DEPARTMENT NINE.