

1. BANTAM INVESTMENTS, LLC v. KTL HOLDINGS, INC. 22CV0795

Judgment Debtor Examination

Application for Order for Appearance and Examination was filed on July 8th. It was scheduled to be heard on September 30, 2022, but was continued to afford Plaintiff additional time to serve the document. There is a proof of service on file indicating that Mr. Leer was personally served on October 12, 2022. The parties are ordered to appear.

TENTATIVE RULING #1: THE PARTIES ARE ORDERED TO APPEAR AT 8:30 A.M., FRIDAY DECEMBER 9, 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. ENSWIDA ROFLOX MUSCI v. BANK OF AMERICA 22CV1028

Defendants' Demurrer

On October 14, 2022, Defendant Rushmore Loan Management Services, LLC and Quality Loan Service Corporation (collectively herein "Defendants") filed a Notice of Demurrer, Demurrer to Complaint, Memorandum of Points and Authorities and Declaration of Neil J. Cooper. All documents were properly served via U.S. Mail on October 12, 2022.

Defendants bring their motion pursuant to Code of Civil Procedure §§ 430.10(e)-(f) on the basis that Plaintiff's complaint fails to state facts sufficient to constitute a cause of action and is uncertain. They request the demurrer be sustained and the complaint dismissed without leave to amend. Defendants met and conferred with Plaintiff's counsel, as required.

Plaintiff's Opposition to Defendants' Rushmore Loan Management Services, LLC and Quality Loan Service Corporation Demurrer to Complaint was filed on November 28, 2022. It was previously served on November 22nd. Defendants filed their Reply in Support of Demurrer to Complaint on November 30th, it was served the day prior on November 29th.

Standard of Review

A demurrer raises only issues of law, not fact, regarding the form and content of the pleadings of the opposing party. Cal. Civ. Pro. §§ 422.10 and 589. It is not the function of the demurrer to challenge the truthfulness of the complaint, instead, for the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading. *Aubry v. Tri-City Hosp. Dist.*, 2 Cal. 4th 962, 966-967 (1992); *Serrano v. Priest*, 5 Cal. 3d 584 (1971); *Adelman v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 352, 359 (2001). A demurrer can only challenge defects that appear on the face of the pleading and other matters that are judicially noticeable, the challenging party cannot make allegations of fact to the contrary. *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985); *Donabedian v. Mercury Ins. Co.*, 116 Cal. App. 4th 968 (2004); *Harboring Villas Homeowners Assn. v. Sup. Ct.*, 63 Cal. App. 4th 426 (1998). Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); *Berger v. Cal. Ins. Guar. Ass'n*, 128 Cal. App. 4th 989, 1006 (2005).

First Cause of Action Breach of Implied Contract

Defendants argue that Plaintiff has failed to allege facts sufficient to give rise to a finding that an implied contract exists. The complaint contains no facts to support the terms of the implied contract, how it came into being, or any other pertinent details.

Plaintiff claims there was an implied contract regarding Rushmore's agreement to review Plaintiff's loan modification application based on her financial documentation. Plaintiff argues that when Rushmore agreed to review Plaintiff for a loan modification and represented that it would send out a loan modification application so Plaintiff could submit her financial documentation, an implied contract to offer Plaintiff a good faith loan modification review on the financial merits was created.

Plaintiff points to the details of the contract as being those contained in the Deed of Trust and the Promissory Note executed by the parties. However, Defendants argue those are express contracts, not implied, and are therefore irrelevant to the implied contract cause of action. Defendants reassert their argument that Plaintiff has not provided any facts surrounding who made the alleged promise to review the financial documentation, when it was made, how it was made, or what the specific promise was.

“A cause of action for breach of implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor’s conduct.” *Yari v. Producers Guild of America, Inc.*, 161 Cal. App. 4th 172, 182 (2008). “Under basic contract law ‘[a]n offer must be sufficiently definite, or must call for such definite terms in the acceptance that the performance promised is reasonably certain.’” (citations omitted)...To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages. (Citations omitted).” *Ladas v. Cal. State Auto. Assn.*, 19 Cal. App. 4th 761 (1993).

The facts of *Yari v. Producers Guild of America, Inc.*, 161 Cal. App. 4th 172, 182 (2008), while different, share some notable similarities to the matter at hand. In that case, Yari argued that by submitting an application and participating in the eligibility process for an award, the Defendants promised to make a fair determination in an objectively reasonable manner. The court found that neither the allegations for implied contract or estoppel were sufficiently plead “...[a]s to both causes of action, Yari is essentially asserting that an application for an award creates a contract, at least if the awarding body has rules and represents that it follows them.” *Yari, Supra* at 182. Ultimately, the court determined an application for an award did not create a contract because, to rule otherwise, would be to rule that all award determinations would be subject to judicial review. *Id.*

Here, the complaint asserts the following facts: (1) Plaintiff submitted complete loan modification applications to Rushmore requesting mortgage assistance; (2) Rushmore improperly denied Plaintiff because the loan was previously modified; (3) Plaintiff has remained steadfast in seeking loss mitigation options and has sufficient income and needs to stay in her home. These facts alone are insufficient to establish an implied contractual agreement. As established by the *Yari* matter, submitting an application alone is not sufficient to create an implied contractual agreement.

Even if the submission of an application, by itself, created an implied contract, the facts in the complaint do not provide sufficient information to determine the scope of Defendants’ duty and what would constitute a breach thereof. Plaintiff states that Defendants owed a duty to perform a good faith loan modification review but there is nothing indicating that such a review required Defendant’s determination to be based solely on the financial documentation provided. In other words, the terms of the alleged implied contract, as plead, are not sufficiently definite to determine if a breach occurred.

The demurrer to the first cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Second Cause of Action for Declaratory Relief

Defendants argue the complaint fails to provide any basis on which a declaratory judgment would be proper. Plaintiff asserts that declaratory relief is needed to avoid future litigation.

“...[D]eclaratory relief is appropriate where questions of public interest are involved...” that would not necessarily expire upon the conclusion of the underlying lawsuit. Gafcon Inc. v. Ponsor & Assoc., 98 Cal. App. 4th 1388, 1404 (2002). Plaintiff is not entitled to a declaration in his or her favor where it is established “...that the sought-after declaration is legally incorrect, that undisputed facts do not support the premise for the sought-after declaration, or that the issue is otherwise not one that is appropriate for declaratory relief.” *Id.* at 1402.

The complaint seeks “a judicial determination and declaration of the parties’ respective rights, duties, and obligations to the Property, and specifically that Defendants were not entitled to foreclose on the property.” Complaint ¶ 23. The complaint fails to state facts to establish that Plaintiff is legally entitled to the requested relief. As such, the demurrer to the second cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Third Cause of Action for Promissory Estoppel

According to Defendants, this cause of action is legally deficient as it fails to plead who made the purported promise, when or how it was made. Defendants argue further that she fails to provide any factual basis for providing how the promise was not adhered to or any loss mitigation she sought.

As noted in the complaint and in Plaintiff’s opposition, the elements of a claim for promissory estoppel are (1) a clear and unambiguous promise, (2) reliance by the party to whom the promise is made, (3) the reliance is reasonable and foreseeable, and (4) the party is injured by its reliance. Garcia v. World Savings, FSB, 183 Cal. App. 4th 1031, 1037 (2010).

The complaint asserts only that Rushmore’s authorized employees promised Plaintiff’s applications would be reviewed in good faith and would be reviewed for all available loss mitigation options. As noted above, the promise must be clear and unambiguous. As is the case with the first cause of action, Plaintiff provides no factual basis for her claim that denial of the loan due to prior modification constituted a breach of Defendant’s alleged promise to review the application in good faith.

The court notes, Plaintiff’s opposition in regard to this cause of action provides a plethora of facts that are not included in the complaint including specifics on Rushmore’s alleged promises, and specifics on how Plaintiff’s reliance on those promises was to her detriment. However, as noted above, the court’s analysis is limited only to the four corners of the complaint. Here, the facts alleged in the complaint are insufficient to make a showing of promissory estoppel.

Defendant’s demurrer as to the third cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Fourth Cause of Action for Predatory Lending

Defendants point to Plaintiff's statement that Rushmore "engaged in predatory lending practices with respect to Plaintiff, the specifics of which are unknown" to support their assertion that Plaintiff does not have facts to support this alleged cause of action. They further assert that any such cause of action would be barred by the one-year statute of limitations since the loan originated in 2009. *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d 1119, 1127 (2020).

Plaintiff, in her opposition, states that her fourth cause of action alleges "Defendant Rushmore, her authorized employees and agents, encouraged Plaintiff to execute the DOT based on misrepresentations..." Opposition 7:17-18. This is incorrect. The complaint states only that "Defendant BOA, their authorized employees and agents, encouraged Plaintiff to execute the DOT based on misrepresentations." Complaint 5:22-23. The only reference to Rushmore in this cause of action is a blanket assertion that Rushmore engaged in predatory lending practices. The complaint admits that it will need to be amended when Plaintiff has the facts to support this allegation.

Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); *Berger v. Cal. Ins. Guar. Ass'n*, 128 Cal. App. 4th 989, 1006 (2005). Here, Plaintiff's complaint is devoid of any factual basis to support her predatory lending practices claim against Rushmore. Without such a factual basis at the outset of litigation Plaintiff cannot simply assert the cause of action and say she will amend the complaint later. Facts to support her assertion are to be plead clearly and completely in the complaint in order to put Defendants on notice of the allegations against them and any possible defenses they may have.

Additionally, Plaintiff has not addressed Defendant's argument that the subject claim is barred by the one-year statute of limitations. Nothing in the complaint accounts for the delay in bringing the subject allegations, nor is there any assertion that the statute should have been tolled.

Defendant's demurrer as to the fourth cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Fifth Cause of Action for Negligence

Defendants argue that the cause of action for negligence must fail because lenders do not owe borrowers a duty of care as a matter of law. *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905 (2022). Additionally, while QLS is a named defendant to this cause of action, Defendants assert that there are no allegations against QLS contained therein.

Plaintiff argues that when Rushmore took an interest in the property, and subsequently QLS did the same, they did so by taking an interest in the income stream and began to act more like investment managers than conventional mortgage lenders. In doing so, Plaintiff asserts, they were no longer subject to the general rule that a financial institution owes no duty of care to a borrower.

"The existence of a duty of care owed by a defendant to a plaintiff is a prerequisite to establishing a claim for negligence. Beauchamp v. Los Gatos Golf Course (1969) 273 Cal.App.2d 20, 32, 77 Cal.Rptr. 914. "Whether a legal duty exists in a given case is primarily a question of law." Wylie v. Gresch (1987) 191 Cal.App.3d 412, 416, 236 Cal.Rptr. 552." Nymark v. Heart Fed. Savings & Loan Assn. (1991) 231 Cal.App.3d 1089, 1095.

Generally, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money. Sheen v. Wells Fargo Bank, N.A., 38 Cal. App. 5th 346 (2019); Wagner v. Benson (1980) 101 Cal.App.3d 27, 34-35, 161 Cal.Rptr. 516; Fox & Carskadon Financial Corp. v. San Francisco Fed. Sav. & Loan Assn. (1975) 52 Cal.App.3d 484, 488, 489, 125 Cal.Rptr. 549; Bradler v. Craig (1969) 274 Cal.App.2d 466, 473, 476, 79 Cal.Rptr. 401. "Liability to a borrower for negligence arises only when the lender 'actively participates' in the financed enterprise 'beyond the domain of the usual money lender.' " *Id.*, at p. 35, 161 Cal.Rptr. 516; quoting Connor v. Great Western Sav. & Loan Assn. (1968) 69 Cal.2d 850, 864, 73 Cal.Rptr. 369, 447 P.2d 609." Nymark v. Heart Fed. Savings & Loan Assn. (1991) 231 Cal.App.3d 1089, 1096.

Even assuming all facts in the pleadings to be true, the court does not find grounds to rule that Defendants owed Plaintiff a duty of care in reviewing her applications for loss mitigation. The facts of this case, as plead, are substantially similar to the facts of Sheen v. Wells Fargo Bank, N.A., 38 Cal. App. 5th 346, wherein the court found Wells Fargo owed no tort duty of care to Sheen during his loan modification negotiations. Loan modification negotiations are well within the purview of a conventional money lender. Without more, Plaintiff has not established that Defendants owed her a tort duty of care. Plaintiff cites Alvarez v. BAC Home Loans Servicing, L.P. 228 Cal. App. 4th 1150(2016) but the court in Sheen addresses Alvarez and provides compelling argument as to why it is no longer good law. Plaintiff has not addressed the Sheen ruling and why it would be inapplicable here.

Defendant's demurrer as to the fifth cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Sixth Cause of Action for Violation of the Unfair Competition Law

Defendants argue this cause of action must fail because Plaintiff has not adequately alleged standing nor has she stated with specificity which Homeowner Bill of Rights Statutes were violated and how. Again, Defendants point to the fact that QLS is included as a defendant on this cause of action but there are no allegations against it.

"...Business and Professions Code section 17200 et seq. [Footnote omitted.] prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct. It embraces " "anything that can properly be called a business practice and that at the same time is forbidden by law." " [Citations omitted.]' Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 180, 83 Cal.Rptr.2d 548, 973 P.2d 527 (Cel-Tech). Standing to sue under the UCL is expansive as well. Unfair competition actions can be brought by a public prosecutor or 'by any person acting for the interests of itself, its members or the general public.' (§ 17204.) ¶ Section 17200 'borrows'

violations from other laws by making them independently actionable as unfair competitive practices. *Cel-Tech, supra*, 20 Cal.4th at p. 180, 83 Cal.Rptr.2d 548, 973 P.2d 527. In addition, under section 17200, 'a practice may be deemed unfair even if not specifically proscribed by some other law.' " *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 *citing Cel-Tech*, at p. 180, 83 Cal.Rptr.2d 548, 973 P.2d 527.

While the court is not convinced that Plaintiff lacks standing to assert a claim under the UCL, Plaintiff's sixth cause of action repeatedly provides conclusory statements that Defendant's conduct was unfair and violates the policy of the law. But again, Plaintiff has not specified what conduct or how such conduct violated the law. Once again, Plaintiff's opposition includes a number of facts to support her unfair competition claim that are not listed in the complaint. The court cannot consider these facts.

Defendant's demurrer as to the sixth cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter.

Seventh Cause of Action for Violation of Truth in Lending Act

Defendants argue that this cause of action is time barred pursuant to the one-year statute of limitations contained in 15 U.S.C. § 1640(e). While Plaintiff states that she has not received monthly statements in a number of years, Plaintiff also alleges the loan was charged off, which means there was no need to send monthly statements. And finally, as with previous causes of action, Plaintiff has named QLS as a defendant under this cause of action but has not provided any factual allegations against it.

Plaintiff asserts that Defendants' failure to provide her with monthly statements is a violation of TILA. She states that she has not been provided a statement in a number of years. She was told the loan was charged off. If so, then she claims Rushmore has illegally accrued interest and other fees on the loan.

Plaintiff has not addressed the fact that she includes QLS as a defendant to this cause of action, and she provides no factual basis to support its inclusion. Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); *Berger v. Cal. Ins. Guar. Ass'n*, 128 Cal. App. 4th 989, 1006 (2005). Accordingly, QLS' demurrer to this cause of action is sustained with leave to amend as set forth below.

Regarding Defendant Rushmore, however, the court finds this allegation to be sufficiently pled. Her assertion that she has not received statements in a number of years is a violation of TILA; in the alternative, if the loan has been charged off then Rushmore has illegally accrued interest and other fees on the loan. If these facts are taken as true, then there are sufficient grounds to proceed with discovery on the matters alleged.

Defendants assert that regardless of the facts alleged, this claim is barred by the one-year statute of limitations. However, "A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily, barred." *Moseley v. Abrams* (1985) 170 Cal.App.3d 355, 359; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 775. It must appear clearly and affirmatively that, upon the face of the complaint, the right

of action is necessarily barred. *Valvo v. University of Southern California* (1977) 67 Cal.App.3d 887, 895; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155. "...[T]he limitations period begins to run when the circumstances are sufficient to raise a suspicion of wrongdoing, i.e., when a plaintiff has notice or information of circumstances sufficient to put a reasonable person on inquiry. *Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d at pp. 1110-1111.

Plaintiff's complaint is silent as to the date she stopped receiving statements. It is silent as to when she was told the loan had been charged off. Thus, there is no basis to make a determination that this claim is barred by the statute of limitations.

Defendant QLS' demurrer to the seventh cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter. Defendant Rushmore's demurrer to the seventh cause of action is denied.

Eighth Cause of Action for Violation of Fair Debt Collection Practices Acts

Defendants argue this cause of action is time barred by the one-year statute of limitations. Defendants further argue that Plaintiff claims there were violations of the Fair Debt Collection Practices Act and she does not plead any factual allegations in support thereof. Finally, Defendants once again point to the fact that QLS is a named defendant on this cause of action but there are no facts to support its inclusion.

As with the seventh cause of action, this cause of action makes no reference to QLS or the reason for the assertion of this cause of action against it. Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); *Berger v. Cal. Ins. Guar. Ass'n*, 128 Cal. App. 4th 989, 1006 (2005). QLS' demurrer to this cause of action is sustained, with leave to amend.

In regard to the claims asserted against Rushmore, the court finds them to be sufficiently plead. The complaint states that Rushmore is a debt collector, Rushmore misrepresented the amount of the debt due, and the Fair Debt Collections Practices Act precludes such actions.

Defendants once again assert the one-year statute of limitations. Again, however, this cause of action is silent as to when the alleged violations occurred and therefore when the statute began to run. Without more, the court cannot find that the statute has already run.

Defendant QLS' demurrer to the eighth cause of action is sustained. Plaintiff has leave to amend this cause of action within ten court days from the hearing date on this matter. Defendant Rushmore's demurrer to the seventh cause of action is denied.

TENTATIVE RULING # THE DEMURRER TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION ARE SUSTAINED. QLS' DEMURRER TO THE SEVENTH AND EIGHTH CAUSES OF ACTION ARE SUSTAINED. PLAINTIFF HAS LEAVE TO AMEND ALL CAUSES OF ACTION WITHIN TEN COURT DAYS OF THE DATE OF THE HEARING DATE ON THIS MATTER. DEFENDANT RUSHMORE'S DEMURRERS TO THE SEVENTH AND EIGHTH CAUSES OF ACTION ARE DENIED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY

12-9-22
Tentative Rulings

TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

3. JANE DOE ET. AL. v. ANDREW KAM LEE ET. AL.

PC20160359

Judgment Debtor Examination

Plaintiffs filed an Application and Order for Appearance and Examination on September 29, 2022. There is no Proof of Service on file indicating that personal service was effected on the Debtor no later than ten days prior to the hearing date. Cal. Civ. Pro. § 708.110(d).

TENTATIVE RULING #3: THE MATTER IS DROPPED FROM THE COURT'S CALENDAR DUE TO LACK OF PROPER SERVICE. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

4. LANCE JOSEPH GERKAN 22CV1021

TENTATIVE RULING #4: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

5. MELVIN BURTON v. PHH MORTGAGE CORP. ET. AL. PC20200465

Defendant's Motion to Compel Discovery

According to Defendant's Counsel on August 8, 2022, Special Interrogatories, Set One, and Requests for Production of Documents, Set One were served on Plaintiffs Melvin Burton and Catherine Burton thereby making their responses due on or before September 9, 2022. To date, Plaintiffs failed to provide any responses to the propounded discovery. Defendant now moves to compel answers and production of documents without objections and further requests an award of monetary sanctions in the amount of \$1,435.

The Proof of Service in the court's file indicates that on October 18, 2022 notice of the hearing and copies of the moving papers were served by mail on Plaintiffs. As of the writing of this ruling, there is no opposition to the motion in the court's file.

The party to whom interrogatories and requests for production have been properly 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 Civ. Proc. §§ 2030.260, 2030.270, 2031.260, and 2031.270. Failure to timely respond waives all objections to the interrogatories and document requests and the propounding party may move to compel answers to interrogatories and production of documents. Code of Civ. Pro., §§ 2030.290 and 2031.300.

Here, it is apparent from the filings that the subject discovery was properly served on Plaintiffs. Plaintiffs have provided no responses to the propounded discovery requests as required by the California Code of Civil Procedure. As such, Plaintiffs are ordered to provide answers and documents in response to Special Interrogatories, Set One, and Requests for Production of Documents, Set One, without objections, on or before December 16, 2022.

Sanctions

One's failure to respond to interrogatories, and requests for production of documents is a sanctionable misuse of the discovery process. Cal. Code Civ. Pro. §§ 2023.010(d) & 2023.030. 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. Cal. Rules of Court, Rule 3.1348(a).

Counsel's declaration in support of the motion states that approximately 2.5 hours were spent on the drafting of the present motion at a billable rate of \$275 per hour and Defendant incurred court fees and costs in the amount of \$60. Counsel estimates an additional 2.5 hours to be incurred in replying to Plaintiff's opposition, if any, and preparing for and attending hearing on the matter. However, a party requesting sanctions for reasonable expenses that were incurred as a result of discovery abuse must already be liable for those expenses before the court can award the costs as sanctions. See Tucker v. Pacific Bell Mobile Servs., 186 Cal. App. 4th 1548 (2010) (anticipated costs for future deposition could not be included in award of sanctions). Therefore, the court finds it appropriate to award sanctions only for those amounts already incurred.

12-9-22
Tentative Rulings

Petitioners are ordered to pay Defendant monetary sanctions in the amount of \$747.50 no later than December 16, 2022. Should a hearing be called, and additional costs and fees incurred, the court reserves jurisdiction to increase this amount if necessary.

TENTATIVE RULING #5: PLAINTIFFS ARE ORDERED TO PROVIDE ANSWERS AND DOCUMENTS IN RESPONSE TO SPECIAL INTERROGATORIES, SET ONE, AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE, WITHOUT OBJECTIONS, ON OR BEFORE DECEMBER 16, 2022. PETITIONERS ARE ORDERED TO PAY DEFENDANT MONETARY SANCTIONS IN THE AMOUNT OF \$747.50 NO LATER THAN DECEMBER 16, 2022. SHOULD A HEARING BE CALLED, AND ADDITIONAL COSTS AND FEES INCURRED, THE COURT RESERVES JURISDICTION TO INCREASE THIS AMOUNT IF NECESSARY. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

6. MICHAEL TATE, ET. AL. v. RICHARD FIESELER, ET. AL. PC20080086

Motion to Rescind Easement

Plaintiff has filed a Motion to Rescind Roadway Easement of Necessity Due to Defendant's Installing Their Own Road in 2008. Specifically, Plaintiff requests the following orders: (1) Rescind the roadway easement as it is no longer necessary with the road installed in 2008; (2) Award Plaintiff \$34,300 for the unpermitted use of her property for Defendants' installation of utilities. This is based on \$50.00 per utility (water, electric, and phone) from the date of installation to present; and (3) Order Defendant to pay Plaintiff \$150 per month from this time forward to cover the use of Plaintiff's property for utilities. Concurrently with the filing of her motion, Plaintiff filed an Order to Show Cause (OSC) and Affidavit in Support of Rescinding the Easement Granted to Defendant. The OSC and motion were personally served on October 14, 2022.

Plaintiff's motion and OSC are denied as they are procedurally deficient. The law and motion process is not the proper mechanism to obtain the orders sought by Plaintiff. Additionally, Plaintiff has provided no factual basis to support the granting of an order to show cause.

TENTATIVE RULING #6: PLAINTIFF'S ORDER TO SHOW CAUSE AND MOTION TO RESCIND THE ROADWAY EASEMENT ARE DENIED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

7. CHEV WILLIAM DAVIS-RICHARDS 22CV1490

TENTATIVE RULING #4: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

8. JESSICA LYNN LENFEST

22CV1478

TENTATIVE RULING #4: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

9. JUDY G. WILLIAMS-MORDECAI

22CV1488

TENTATIVE RULING #4: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

10. RYLEE B. 22CV1506

TENTATIVE RULING #4: THE PETITION FOR NAME CHANGE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

11. SKYE DEANGELIS SIELICKI 22CV1492

Petitioner has not completed and filed the Name and Information About the Person Whose Name is to Be Changed (Form NC-110). Without the required attachment, the court cannot approve the name change. The matter is continued to December 23, 2022 at 8:30 a.m. in Department 9. Petitioner is ordered to file a completed NC-110 prior to the next hearing date.

TENTATIVE RULING #4: PETITIONER HAS NOT COMPLETED AND FILED THE NAME AND INFORMATION ABOUT THE PERSON WHOSE NAME IS TO BE CHANGED (FORM NC-110). WITHOUT THE REQUIRED ATTACHMENT, THE COURT CANNOT APPROVE THE NAME CHANGE. THE MATTER IS CONTINUED TO DECEMBER 23, 2022 AT 8:30 A.M. IN DEPARTMENT 9. PETITIONER IS ORDERED TO FILE A COMPLETED NC-110 PRIOR TO THE NEXT HEARING DATE. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

12. NANCY KOZICKI v. SERINA GOMEZ ET. AL. 22CV0071

Plaintiff moves for leave to file First Amended Complaint. A proposed amended complaint has been submitted. The amendments requested consist of naming the proper beneficiary of the deed of trust as a party to the action, and a few additional nominal changes such as changing the date and firm name.

The proof of service in the court's file declares that on October 11, 2022, notice of the hearing and copies of the moving papers were served by mail on Defendant. There is no opposition to the motion in the court's file.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect..." Code of Civil Procedure, § 473(a)(1). There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047. In fact, "...it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530. "...absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." Board of Trustees of Leland Stanford Jr. University v. Superior Court (2007) 149 Cal.App.4th 1154, 1163 *citing* Higgins v. Del Faro (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.

Here, Plaintiff has sufficiently shown that the addition of the newly named party is necessary to assert her causes of action. The court does not see any way in which allowing the amendment would prejudice Defendants and, seemingly, neither do Defendants as they have not filed oppositions to the motion. Given the circumstance, the court finds it proper to grant Plaintiff leave to file First Amended Complaint.

TENTATIVE RULING #12: PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT IS GRANTED. PLAINTIFF IS ORDERED TO FILE THE FIRST AMENDED COMPLAINT WITHIN TEN (10) COURT DAYS OF THE DATE OF THIS ORDER. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule

8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

13. SCOTT HICKEY v. DOES 1-25 21CV0216

Plaintiff's Motion to Compel Compliance with Subpoena

On October 18, 2022, Plaintiff filed a Motion for Order Compelling Compliance with Subpoena for Production of Unredacted Report and for Sanctions. The Notice of Motion and Motion as well as the Declaration of Edward A. Shade in Support of Motion were served on October 17th.

This matter arises from a skateboard vs. bicycle accident that occurred on January 31, 2021. When the accident occurred, Plaintiff was unable to obtain the name and contact information of the skateboarder. However, the skateboarder did call 911. Plaintiff filed suit naming only Does 1-25. Now, in order to amend his complaint to name the skateboarder, Plaintiff is seeking an unredacted copy of the CFS Detailed Report.

Plaintiff served John D'Agostini and the El Dorado County Sherriff (hereinafter the "County") with a subpoena duces tectum on July 21, 2022. In response to the subpoena, the County produced a redacted copy of the CFS Report. Plaintiff attempted to meet and confer on the matter both telephonically and in writing. He now seeks an order compelling the unredacted document and sanctions in the amount of \$760.

Plaintiff argues that County is required to disclose the phone number of the party calling 911 pursuant to Government Code § 6254(f) which directs law enforcement to disclose "...the names and addresses of the persons involved in, or witnesses other than confidential informants to, the incident..." Plaintiff maintains that the telephone number is akin to an address.

County filed and served its Opposition to Motion for Order Compelling Compliance with Subpoena for Production of Unredacted Report and For Sanctions on November 28th. The County opposes the motion as a Notice to Consumer is required for disclosure of the requested information pursuant to sections 1985.3 and 1985.4 of the Code of Civil Procedure. The County notes that Government Code Section 7923.605(a) states only that names and addresses are to be disclosed; phone numbers are not included in its purview. County maintains that it has acted with substantial justification and Plaintiff's request for sanctions should be denied.

While it is true that Government Code Section 7923.605 expressly refers to names and addresses of persons involved in, or witnesses to, the incident and does not include telephone numbers, the legislature has represented its intention for such information to be discoverable in circumstances such as the one giving rise to Plaintiff's claim. Specifically, Vehicle Code Section 20012 maintains that the "...law enforcement agency to whom the accident was reported shall disclose the entire contents of the reports, *including, but not limited to*, the names and addresses of persons involved or injured in, or witnesses to, an accident..." Cal. Veh. Code § 20012 (emphasis added). Of course, disclosure under Section 20012 does appear to be at odds with Code of Civil Procedure Section 1985.4 which states that the procedures set forth under Civil Procedure Section 1985.3 "...are applicable to a subpoena duces tecum for records containing 'personal information' as defined in Section 1798.3 of the Civil Code." The procedures established

by Civil Code Section 1985.3 do require prior notice to be given to the individual whose personal information is to be disclosed.

The seemingly conflicting nature of these two sections calls into question the discoverability of the telephone number at issue. However, it is a well-established tenet of the law that “[a]ny doubt about discovery is to be resolved in favor of disclosure.” Advanced Modular Sputtering, Inc. v. Sup. Ct., 132 Cal. App. 4th 826 (2005). While Government Code Section 7923.605 does not expressly call for the disclosure of telephone numbers, the legislature has clearly expressed their intention for a party to an accident to be provided with all information necessary to prosecute his or her action, including contact information necessary to identify other parties or witnesses to the accident. Here, the court feels that disclosure of the unredacted report is in keeping with the legislative intent for broad discovery. Plaintiff’s motion to compel is granted. County is to produce the unredacted report no later than December 23, 2022.

Sanctions

According to the Declaration of Edward A. Schade In Support of Motion for Order Compelling Compliance with Subpoena For Production of Unredacted Report and For Sanctions, Plaintiff’s counsel incurred 0.5 hours drafting his meet and confer letter, 1.5 hours drafting the present motion, and \$60 in filing fees. At a billable rate of \$350 per hours, this amounts to \$760.

Plaintiff makes his request for sanctions pursuant to Code of Civil Procedure Section 2025.480(j) which states in pertinent part, “[t]he court shall impose a monetary sanction...against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel an answer or production, unless it finds that the one subject to the sanction acted with substantial justification...”

Here, it is apparent that the County acted with substantial justification in refusing to disclose the redacted report. The County’s decision to do so was backed by sound, well established law. The County engaged with Plaintiff in the meet and confer process and provided the legal basis for their response. As such, Plaintiff’s request for sanctions is denied.

TENTATIVE RULING #6: PLAINTIFF’S MOTION TO COMPEL IS GRANTED. COUNTY IS TO PRODUCE THE UNREDACTED REPORT NO LATER THAN DECEMBER 23, 2022. PLAINTIFF’S REQUEST FOR SANCTIONS IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR

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HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT'S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

14. PEOPLE v. US CURRENCY 22CV0916

On July 13, 2022, the People filed an amended petition for forfeiture of cash and other property seized by the El Dorado County Sheriff's Department. The petition states: \$178,829.01 in U.S. Currency and jewelry valued at approximately \$31,340 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 jewelry is booked as evidence in the custody of the Sheriff's Office; 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 were traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money and jewelry is forfeited to the State of California.

The Petition for Forfeiture and all other required documents were served on Kim Thuy Harris and Thomas Henry Harris (collectively herein "Claimants") by way of certified mail on August 26, 2022. Claimants each filed their respective Claim Opposing Forfeiture on September 22, 2022.

"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).

"Any person claiming an interest in the property seized pursuant to Section 11488 may... 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 ... 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). "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." Health and Safety Code §11488.5(c).

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The People have timely filed their Petition for Forfeiture and Claimants have each made a claim to the subject property. However, it appears there is no Proof of Service on file for either Claim Opposing Forfeiture. The parties are ordered to appear to address the service deficiency.

TENTATIVE RULING #14: THE PARTIES ARE ORDERED TO APPEAR AT 8:30 A.M. IN DEPARTMENT 9 ON DECEMBER 9, 2022. 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. VAN T. VU ET. AL. v. PAUL FEITSER ET. AL.

PC20180223

Cross-Defendant Crossroad Venture Group, Inc.'s Demurrer to the Third Amended Cross-Complaint

Demurrer of Omni Structures & Management, Inc.

TENTATIVE RULING #15: THE MATTER IS CONTINUED TO DECEMBER 23, 2022 AT 8:30 A.M. IN DEPARTMENT 9.

16. PEOPLE OF THE STATE OF CALIFORNIA v. MOLLY ANNE BUTTERFIELD 21 CV0167

Claimant Butterfield 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 matter is set for trial on April 4, 2023. A trial readiness conference is set for the present hearing date. The parties are ordered to appear for trial readiness conference.

TENTATIVE RULING #16: THE PARTIES ARE ORDERED TO APPEAR AT 8:30 A.M. IN DEPARTMENT 9 ON DECEMBER 9, 2022 FOR TRIAL READINESS CONFERENCE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

17. IN RE: PETITION OF J.G. WENTWORTH ORIGINATIONS, LLC

22CV1611

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).

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. Ins. 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." Ins. Code § 10136(a).

"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." Ins. Code § 10137.

"A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express written findings by the court that: ¶ (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents. ¶ (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing. ¶ (3) The transferee has provided the payee with a disclosure form that complies with Section 10136 and the transfer agreement complies with Sections 10136 and 10138. ¶ (4) The transfer does not contravene any applicable statute or the order of any court or other government authority. ¶ (5) The payee reasonably understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Section 10136. ¶ (6) The payee reasonably understands and does not wish to exercise the payee's right to cancel the transfer agreement." Ins. Code § 10139.5(a).

12-9-22
Tentative Rulings

“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...” circumstances enumerated in Section 10139.5(b) of the Insurance Code.

The matter came before the court for hearing on December 2, 2022. At that time, the court continued the matter to the present hearing date and directed counsel for Plaintiffs to submit a declaration addressing the Section 10139.5(b). As of the time of this writing, no such declaration has been received. Without additional information to properly analyze what is in the best interest of the payee, the court cannot approve the Petition. The petition is denied.

TENTATIVE RULING #17. THE PETITION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT’S WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.