

Defendant seeks an order sustaining its demurrer to Plaintiffs' causes of action for Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing ("Bad Faith"). Defendant filed its moving papers on October 26, 2022. Plaintiffs filed and served their opposition papers on January 10, 2023. Thereafter, Defendant filed and served its reply brief on January 19th.

Request for Judicial Notice

Defendant requests the court take judicial notice of Mercury Automobile Policy no. 0401 03 110089075 (the "Policy"). Plaintiffs have not opposed the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed.

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

Here, the insurance policy in question is referenced throughout the complaint. Defendants have provided all parties and the court with copies of the policy in question and there appears to be no dispute as to the authenticity of the document set forth by Defendant. As such, the court grants Defendant's Request for Judicial Notice.

Demurrer

This matter stems from a car accident in which Plaintiff Dale Dellagana was riding as a passenger in his vehicle when the vehicle went off the road. The driver of the vehicle, Derous Hardcastle, was uninsured. As such, Mr. Dellagana made uninsured motorist, property damage and bodily injury claims against his own insurance policy through Defendant, Mercury Insurance. Mr. Hardcastle also tendered his claim to Defendant. Defendant denied the claims stating that Mr. Dellagana's policy excludes coverage for liability for bodily injury to an insured, liability for property damage owned by an insured and because Mr. Dellagana's vehicle was not an uninsured motor vehicle under the definition as listed in the policy. Mr. Dellagana sued Mr. Hardcastle as a result of the accident. Mr. Hardcastle tendered his defense to Defendant and Defendant declined. Eventually a default judgment was entered. Mr. Hardcastle's claims that Defendant wrongfully failed to defend and indemnify Defendant were thereafter assigned to

Plaintiffs. Plaintiffs now claim Defendant breached its obligations under the insurance policy by failing to defend and indemnify Mr. Hardcastle and by denying Mr. Dellagana's claims.

Defendant premises the demurrer on its argument that the insurance policy in question does not cover any of the claims asserted by Mr. Dellagana or Mr. Hardcastle and without coverage there can be no breach of contract or bad faith claim. Likewise, when there is no coverage for the underlying injury, there can be no coverage for the derivative loss of consortium claim which is being asserted by Mrs. Dellagana. Defendant claims that the exclusions under the contract are clear and unambiguous and therefore the interpretation of the policy is a question of law to be handled at the demurrer stage.

Plaintiffs argue the demurrer should be overruled because the face of the complaint contains sufficient allegations to establish both a breach of contract claim and a claim for bad faith. Whether or not there is coverage under the policy is a question of fact for the jury to decide. Nonetheless, Plaintiffs maintain that they were told that the policy purchased would provide liability, property damage and uninsured motorist coverage to Plaintiffs and their permissive drivers. No exclusions were discussed with Plaintiffs.

Standard on Demurrer

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 but not contentions, deductions or conclusions of fact or law. 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). The demurrer is to be overruled if the allegations of the complaint are sufficient to state a cause of action under any legal theory. Brousseau v. Jarrett, 73 Cal. App. 3d 864 (1977); *see also* Nguyen v. Scott, 206 Cal. App. 3d 725 (1988).

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). Where a document is attached to, or referenced in, the complaint, that document may be considered on demurrer. Weitzenkorn v. Lesser, 40 Cal. 2d 778, 785-786 (1953). In such instances "...the court may, upon demurrer, examine the exhibit and treat the pleader's allegations of its legal effect as surplusage." *Id.* at 786. However, "[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." Fremont Indemnity Co. v. Fremont General Corp., 148 Cal. App. 4th 97, 114 (2007).

While the court may take judicial notice of an extrinsic document, [t]aking judicial notice of a document is not the same as accepting a particular interpretation. "[A] general demurrer to

the complaint admits not only the contents of the [contract] but also any pleaded meaning to which the [contract] is reasonably susceptible.” Aragon-Haas v. Family Security Ins. Services, Inc., 231 Cal.App.3d 232, 239 (1991)(emphasis added). Where there is only one reasonable interpretation to a contract, the court may sustain the demurrer without leave to amend. Baldwin v. AAA Northern Cal., Nev. & Utah Ins. Exch., 1 Cal.App.5th 545, 553 (2016).

In the matter at hand the complaint asserts causes of action for breach of contract and bad faith. It does reference the insurance policy and the terms therein that would give rise for the asserted causes of action. Additionally, Defendant has requested, and Plaintiffs have not opposed, judicial notice of the insurance policy. Thus, in ruling on the demurrer, the court takes all of the facts in the complaint as true and takes into consideration the terms of the insurance policy.

After reviewing the aforementioned, the court finds there to be significant disputes regarding the proper interpretation of the contract. Defendant argues their exclusions are stated in plain and clear language, while Plaintiffs claim they are not and, according to Plaintiffs, in such instances the court is to err on the side of coverage. This dispute appears to have delved into the realm of contract interpretation. The court does not feel the contract is sufficiently clear to be subject to interpretation at the demurrer stage. As such, Defendant’s demurrer is overruled.

**TENTATIVE RULING #1: DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
DEFENDANT’S DEMURRER IS OVERRULED.**

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Plaintiff seeks an order joining Cross-Defendants Wendy Siri and Larry Siri (hereinafter collectively the “Siris”) to the present action as named defendants. Plaintiff’s moving papers were filed and served on February 9, 2023. There have been no oppositions to the motion filed.

The matter at hand stems from a dispute involving the location of a property line between two adjoining parcels. The Siris were the prior owners of both parcels. One of which was sold to Plaintiff and the other was sold to Cameron and London Litzka (the “Litzkas”). Plaintiff maintains that the Siris, along with the other defendants, misrepresented the location of the property line thereby resulting in significant financial harm to Plaintiff. Pursuant to an arbitration agreement in the California Residential Purchase Agreement (the “Agreement”), Plaintiff commenced arbitration against the Siris and brought the present action against the remaining defendants. Defendants cross complained against the Siris and now Plaintiff seeks to add them as defendants to the suit despite the arbitration clause in the contract.

Generally speaking, “[w]hen actions involving common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Cal. Civ. Pro. § 1048(a). The court has broad discretion to consolidate actions taking into consideration the time and expense to the parties and the court and whether or not the parties will be prejudiced by such consolidation. *See Id*; *See also Fellner v. Steinbaum*, 132 Cal. App. 2d 509 (1955). The court’s authority stands even in the face of an arbitration agreement where the court finds “[a] party to the arbitration agreement is also a party to a pending court action...with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.” Cal. Civ. Pro. § 1281.2. While Section 1281.2 does not expressly vest the court with the ability to order an arbitration consolidated with a pending civil case, it has been judicially determined that a trial court does have the authority to consolidate a contractual arbitration proceeding. *See Mercury Ins. Group v. Sup. Ct.*, 19 Cal. 4th 332 (1998).

It is clear that Plaintiff’s claims against Defendants and against the Siris involve common questions of law and fact which could potentially lead to inconsistent judgments between the arbitration and the civil case. The court sees no prejudicial effect that consolidation would have on any of the parties and neither Defendants nor the Siris have opposed the motion to argue otherwise. Thus, under the circumstances, the court feels it is warranted to grant the Motion to Consolidate and order arbitration case number S294615 consolidated with the present matter, Superior Court case number 22CV1082 for all purposes.

TENTATIVE RULING #2: THE MOTION TO CONSOLIDATE IS GRANTED. ARBITRATION CASE NUMBER S294615 IS ORDERED CONSOLIDATED WITH THE PRESENT MATTER, SUPERIOR COURT CASE NUMBER 22CV1082 FOR ALL PURPOSES.

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3. NAME CHANGE OF JONAH MELTON

22CV1851

Petitioner filed a Petition for Change of Name and Order to Show Cause (OSC) on December 27, 2022. However, it does not appear the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure Section 1277(a). The hearing on this matter is continued to May 5, 2023 at 8:30 a.m. in Department 9. Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

TENTATIVE RULING #3: THE HEARING ON THIS MATTER IS CONTINUED TO MAY 5, 2023, AT 8:30 A.M. IN DEPARTMENT 9.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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Petitioner filed a Petition for Change of Name and Order to Show Cause (OSC) on January 27, 2023. However, it does not appear the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure Section 1277(a). The hearing on this matter is continued to May 5, 2023 at 8:30 a.m. in Department 9. Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

TENTATIVE RULING #4: THE HEARING ON THIS MATTER IS CONTINUED TO MAY 5, 2023, AT 8:30 A.M. IN DEPARTMENT 9.

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5. NAME CHANGE OF NANTHA BALAN SANKAR VALLIAMMAL

22CV1330

Petitioner filed a Petition for Change of Name on August 22, 2022. The Proof of Publication was filed on November 4, 2022. Upon review of the file, the court has yet to receive the background check for Petitioner, which is required under the law. The matter is continued to April 14, 2023 at 8:30 a.m. in Department 9.

TENTATIVE RULING #5: THE HEARING ON THIS MATTER IS CONTINUED TO APRIL 14, 2023, AT 8:30 A.M. IN DEPARTMENT 9.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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TENTATIVE RULING #6: THE PETITION FOR NAME CHANGE IS GRANTED.

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Non-party Dr. Gary Glenesk seeks an order quashing the deposition subpoena for his deposition or, in the alternative, resetting the deposition for one of Dr. Glenesk's available dates. The Motion to Quash Deposition Subpoena was filed on December 30, 2022. The motion was personally served the same date as filing. Neither Plaintiff nor Defendant has opposed the motion.

On December 9, 2022, Dr. Glenesk was served with a deposition subpoena mandating his appearance on January 5, 2023. Dr. Glenesk responded with a letter that same day wherein he indicated that he was unavailable for the January 5th date, but he proposed alternative dates of January 24th or February 7th. As of the filing of the motion Dr. Glenesk had not received a response to his letter.

Civil Procedure Section 1987.1 vests the court with the authority to either quash a deposition subpoena in its entirety or to modify it. Cal. Civ. Pro. § 1987.1(a). "In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands..."*Id.*

Here, Dr. Glenesk is not opposing the taking of his deposition. Instead, he is simply requesting that it be taken on a date that would be convenient for his schedule. Defendants, who noticed the deposition, have not provided any reason why the deposition cannot be held on a different date. That said, the parties are ordered to confer in good faith and choose a mutually acceptable date and time for the deposition. The Motion to Quash is granted only to the extent that the deposition date shall be modified to be the date agreed upon by the parties.

TENTATIVE RULING #7: THE PARTIES ARE ORDERED TO CONFER IN GOOD FAITH AND CHOOSE A MUTUALLY ACCEPTABLE DATE AND TIME FOR THE DEPOSITION. THE MOTION TO QUASH IS GRANTED ONLY TO THE EXTENT THAT THE DEPOSITION DATE SHALL BE MODIFIED TO BE THE DATE AGREED UPON BY THE PARTIES.

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Plaintiffs filed an Application and Order to Appear for Examination which was signed by the court on January 31, 2023. The application and order direct Defendant Arthur Scott Dockter to appear for examination. The Proof of Service on file indicates service was effectuated on January 30, 2023, the day prior to the court's signing of the order.

TENTATIVE RULING #8: THE PARTIES ARE ORDERED TO APPEAR. PLAINTIFF IS ORDERED TO PROVIDED THE COURT WITH PROOF THAT THE DEBTOR WAS PERSONALLY SERVED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE AS REQUIRED BY CIVIL PROCEDURE SECTION 708.110(d). IF THE COURT DOES NOT RECEIVE THE APPROPRIATE PROOF OF SERVICE, THE EXAMINATION WILL NOT TAKE PLACE. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.