05-26-23
Dept. 9
Tentative Rulings

1. 5059 GREYSON CREEK DRIVE, LLC v. PERSEVERE LENDING, INC. ET AL 22CV1328

Motion to Strike

Defendant requests this court to strike an unauthorized "amicus" pleading in this action. However, no such pleading has been filed with this court.

TENTATIVE RULING # 1: NO AMICUS BRIEF HAVING BEEN FILED IN THIS ACTION, THE MATTER IS DROPPED FROM CALENDAR.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES PC20190309

(1) Motion for Judgment on the Pleadings

(2) Motion for Summary Judgment

This case arises from the contractual relationship between the Plaintiff City of Rocklin ("City") and Defendants Legacy Family Adventures and David Busch (collectively "LFA") regarding the design, construction and operation of a public recreational to be developed into an "adventure park" from an old quarry in the City of Rocklin (the "Park").

Motion for Judgment on the Pleadings

LFA filed a motion for judgment on the pleadings with respect to the First and Second Causes of Action (Fraud), Third Cause of Action (Negligent Misrepresentation), Fourth Cause of Action (Business and Professions Code § 17200), Fifth Cause of Action (Breach of Contract), Seventh Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing), Ninth Cause of Action (Money Had and Received), Eleventh Cause of Action (Declaratory Relief) and Twelfth Cause of Action (Unjust Enrichment) contained within the First Amended Complaint filed by Plaintiff City of Rocklin ("City")

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code Civil Proc. § 438(c)(3)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. Code Civil Proc. § 438(d).

The First Amended Complaint in this case includes twelve causes of action, nine of which are the subject of LFA's motion for judgment on the pleadings. However, since the motion was filed, Plaintiff has dismissed the Fourth and Eleventh Causes of Action. To that extent, the motion has been mooted as to those Causes of Action.

Leave to File Second Amended Complaint

The City argues that LFA's motion for judgment on the pleadings is moot because the City intends, and requests leave to, file a Second Amended Complaint. This request is not properly before the court, having been made within the opposition pleadings to LFA's motion. City may file a motion to request leave to file a second amended complaint.

Request for Judicial Notice

Defendant requests the court to take judicial notice of the Master Agreement that was entered into by the parties pursuant to a resolution of the Rocklin City Council. Such legislative enactments are judicially noticeable under Evidence Code § 452(b). The court is required to

take judicial notice of matters listed in Evidence Code § 452 when a party requests it and the other party has sufficient notice of the request through pleadings to allow it to prepare to meet the request, and where the requesting party furnishes the court with sufficient information to enable it to take judicial notice of the matter. Evidence Code § 453. Accordingly, the court is required to grant LFA's request for judicial notice of the Master Agreement and the City Council Resolution awarding that contract to LFA, and the court is allowed to consider the contents of that agreement in its evaluation of LFA's motion.

The court is also required to take judicial notice of the City of Rocklin's Municipal Code and the applicable statutes of the State of California. Evidence Code § 451.

Meet and Confer Requirement

Before filing a Motion for Judgment on the Pleadings, the moving party must meet and confer in person or by telephone with the party who filed the pleading that is subject to a Motion for Judgment on the Pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the Motion. Code Civ. Pro. § 439(a). A failure to meet and confer may be excused if it is caused by the opposing party's failure to respond to the meet and confer request. Code Civ. Pro. § 439(a)(3)(B).

With its Motion, the Plaintiff has filed a Declaration that documents the parties' engagement in a meet and confer process prior to filing the Motion. Reply Declaration of R. Weems in Support of Defendants' Motion for Judgment on the Pleadings, dated April 21, 2023. This Declaration meets the requirements of Code of Civil Procedure § 439(a)(3)(B).

Factual Background

On January 24, 2017, pursuant to authorization by the Rocklin City Council in Resolution 2017-12, the parties executed the Rocklin Adventure Park Master Agreement ("Master Agreement") for the design, construction and operation of the Park. The Master Agreement was divided into three phases:

1) Thirty Percent Design Phase, in which LFA was to produce a design/development package that would contain sufficient information for the issuance of a request for proposals for design-build construction of the Park (Master Agreement, Exhibit B);

2) Design Assistance Phase, during which, should the City elect to proceed with a construction contract for the Park, LFA would provide advice and assistance in the design-build process (Master Agreement, Exhibit E); and

3) Operating Phase, following authorization by the City Council, LFA was to be granted exclusive rights to operate and maintain the Park according to the terms of the Master Agreement, Exhibit E. The Initial Term of the Operating Phase was to begin on the first date that

the Park "is open for business" and was to continue for 15 years. (Master Agreement, Exhibit E, ¶ 2.1).

City alleges that LFA fraudulently induced the City to enter the Master Agreement, that LFA breached the Master Agreement, and that LFA owes the City money as damages for losses associated with the Master Agreement and for funds LFA collected pursuant to the Master Agreement that are due to be paid to the City.

First Cause of Action (Fraud)

Plaintiff/City alleges that Defendant Busch:

> "touted his business acumen and alleged prior success in operating amusement parks, concealing and not disclosing his prior business failings"; (FAC ¶75) that he "affirmatively misrepresented that his parks in Pflugerville, Texas and White Settlement, Texas were successful and viable in January 2017 when the truth was that his operations had been terminated at those parks because his entities failed to fulfil financial obligations. . . . Busch represented that the parks . . . were "wildly successful" . . . . He even represented that if the City were to contact the people with whom he had dealt with over the years that the City would get "glowing, glowing remarks." (FAC ¶76)

The City alleges that Busch induced the City to enter into the Master Agreement in 2017 and the subsequent Operating Agreement in 2018 knowing that these representations were false when they were made but that they in fact contained numerous failures, (FAC ¶77) and that he failed to fully disclose his business experience and prior business failings. (FAC ¶78) The FAC alleges that Busch made the representations with the intent to deceive the City and induce the City to enter the Master Agreement and the Operating Agreement on April 24, 2018. (FAC ¶79) The City states that it reasonably relied on those representations when it executed the Master Agreement and Operating Agreement and decided "to move forward with the construction of the adventure park and thus invest millions of dollars." (FAC ¶80) The City argues that as a direct and proximate result of Busch's misrepresentations, the City advanced more than $7 million to design, build and operate the adventure park. (FAC ¶81)

Constructive Notice/Duty of Inquiry

LFA's motion argues that the City had constructive notice of the financial condition of his prior projects that might have affected the City's decision as to whether to enter the Master Agreement in January 2017. Further, LFA argues, the City had a duty to investigate before entering into a business relationship with Busch and LFA for two reasons. First, because the Master Agreement was a public works project, and second, because "a member of the public raised [information] regarding the cessation of operating agreements in two Texas cities", which prompted Councilmembers' questions about the status of LFA's' current operations in other cities. (FAC ¶ 38)

LFA's motion points out that the City didn't do any research or investigation on Busch's claims or his purported qualifications to design and operate this major public project. The FAC states that the City "*proceeded* to investigate" in 2018 after LFA took over operations. (FAC ¶3, emphasis added.) It was only after the October 2018 financial projections were submitted indicating that the project would not be profitable that, "'[t]he City became extremely concerned about Busch and LFA's competence and credibility at that point. What followed were numerous meetings and the *beginning of an investigation* into Busch's background." (FAC ¶ 61, emphasis added.) "While analyzing the issues relating to the 10/18 Pro-Forma Statement, the City simultaneously performed an *initial investigation* into Busch's background. That investigation revealed the aforementioned misrepresentations and concealments relating to Busch's Texas business dealings." (FAC ¶ 70, emphasis added.)

The City responds that it had no duty to investigate, and cites numerous cases. The City cites McMahon v. Grimes, 206 Cal. 526, 275 P. 440 (1929), where a farmer who was interested in receiving a commission from the seller talked an out-of-state relative into buying a neighboring lot, misrepresenting the ability of the land to profitably support peach crops. Upon buying the property and moving from their Massachusetts home to California to try their hand at peach farming, the plaintiffs soon learned from other neighbors and the county agricultural commission that the land was worthless for growing peaches. In that case the court noted the well-established principle that the "mere existence of opportunities for examination, or of sources of information" is no defense to intentional fraud. Id.

City cites Blankenheim v. E. F. Hutton & Co., 217 Cal. App. 3d 1463 (1990) for that case's citation of Seeger v. Odell, 18 Cal. 2d 409 (1941), which in turn quotes Chamberlin v. Fuller, 59 Vt. 247 (1887): "No rogue should enjoy his ill–gotten plunder for the simple reason that his victim is by chance a fool." City of Rocklin's Opposition to Motion for Judgment on the Pleadings ("City's Opposition") at 9. However, in Seeger, the court noted where a plaintiff is alleging fraud "[i]t must appear . . . not only that the plaintiff acted in reliance on the misrepresentation but that he was justified in his reliance. (Rest. Torts, sec. 537; see cases cited in 12 Cal. Jur. 750 et seq.) He may not justifiably rely upon mere statements of opinion, . . . unless the person expressing the opinion purports to have expert knowledge concerning the matter or occupies a position of confidence and trust." Seeger v. Odell, 18 Cal. 2d 409, 414 (1941).

In sum, City defends its Complaint by arguing that "there is ordinarily no duty to investigate a fraudster's lies." City's Opposition at 9. The City's language is apt: there is *ordinarily* no duty to investigate.

However, as LFA's motion states, this case falls within the context of a public contract that alters the relative position of the parties. The City argues that competitive bidding of the Master Agreement was not required because the California Public Contracts Code, Local Agency

Public Construction Act does not apply to the agreements entered into by the parties. No competitive bidding was required, the City says, because an "the operation of an adventure park" is not included in the language of Public Contracts Code § 20161.[1]

Only the Master Agreement is before the court on this motion for judgment on the pleadings. The parties substantially altered the terms of their agreement as the project progressed, but at the time the City says it was "lured" and "induced" to contract with LFA, the contract terms were those of the Master Agreement as awarded by the City Council in January, 2017. The scope of services to be provided in the initial "Thirty Percent Design Phase" of the contract were "design, programming and consulting services." Master Agreement, Exhibit C1, ¶1; FAC ¶43. The work product LFA was contracted to deliver were "design development plans" consisting of "drawings and other documents . . . to further fix and describe the size and character of the Project." Master Agreement, Exhibit C1, ¶2B. For this work LFA as consultant was to be paid $45,000. Master Agreement, Exhibit C2. A further payment of $20,000 was to be paid "upon commencement of the Design Build Contract", which was the second phase of three contractual phases leading up to LFA's operation of the park. Id.

The City of Rocklin Municipal Code Chapter 3.04 governs public procurement of contracts. It applies to "(1) the purchase of equipment, supplies, products or materials ("goods"), (2) the procurement of services, (3) the procurement of professional services; and (4) public works projects, funded by the city of Rocklin." Rocklin Municipal Code § 3.04.020. The definition of a professional services contract under the Rocklin Municipal Code ("Code") is as follows:

> work performed by architectural, landscape architectural, engineering, environmental, land surveying, construction project management, and specialized professional services such as financial, economic, accounting, legal, (or administrative matters) lobbying firms, and by other specially trained persons.

---

[1] "As used in this chapter, "public project" means: (a) a Project for the erection, improvement, painting or repair of public buildings and works." Public Contracts Code § 20161. This definition would not be complete without also mentioning the definition of a "public work" in Public Contracts Code § 1101: "'Public works contract,' as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind."

The *operation* phase as contemplated by the master Agreement of the adventure park is a revenue contract, but the second, design-build phase of the overall project anticipated competitive bidding of a public works contract. Master Agreement, ¶3(a). The Master Agreement contemplates Defendant's participation in the second phase as a consultant pursuant to a professional services contract. Master Agreement, Exhibit D.

The Code requires that: [t]he selection of persons or firms to provide such professional services shall be *on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required*. Price may be considered after making a determination based upon professional qualifications." Id. at 3.04.030(e) (emphasis added). There is no dollar limit imposed on this requirement to select professional service contractors on the "basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required." Id.

Any contract for professional services in excess of $50,000 must be procured by means of a Request for Proposal process. Id. at 3.04.050(E)(2). Requests for Proposals are governed by § 3.04.080 of the Rocklin Municipal Code, and require a determination of responsibility of the entity with which the City proposes to enter a professional services contract:

> Determination of Nonresponsibility. In addition to price, the lowest bidder must be a responsible bidder, meaning that the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity and experience to satisfactorily perform the contract. Factors to be considered may include performance history, reliable financial information, bonding and insurance capacity, public works experience, personnel, litigation history, the ability, capacity, and skill to perform the contract experience to perform the contract; the bidder must have the facilities and financial resources necessary to perform the contract within the time specified, without delay or interference; and, the bidder must have a record of satisfactory performance of prior contracts and a record of compliance with laws and ordinances applicable to the contract. If a bidder who otherwise would have been awarded a contract is found non-responsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the city manager or his/her designee.

The initial phase of the Master Agreement included an initial payment of $45,000, just under the $50,000 limit that would have triggered the need for City staff to prepare a Request for Proposals to open the award of this contract to any qualified provider. However, an additional $20,000 payment is anticipated "[u]pon commencement of the Design Build Contract."[2] This brings the total payment for "consulting services" in the "Thirty Percent Design Phase" to $65,000, above the legal threshold for "no-bid" professional services contracts.

[2] Inexplicably, the payment terms of the Design Build Phase, alternatively termed the "Design Assistance Phase" states that compensation in that phase is at an hourly rate for consulting services, "not [to] exceed $5,000 (five thousand dollars) per month." Master Agreement, Exhibit D2. There is no reference in the contract provisions in the second phase to a $25,000 payment. Indeed, it would be illegal to make such an initial payment prior to completion of any task by the contractor, Cal. Const. Article XVI, and it would be illegal to divide the contract payments to evade the procurement requirements. Rocklin Municipal Code § 3.04.100(D) ("The structuring or splitting of the purchase of goods, procurement of services or professional

Even if the contract amount was less than $50,000 in the initial "Thirty Percent Design Phase", if the City had followed the Rocklin Municipal Code's requirements the contract would have been awarded "on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required." Rocklin Municipal Code § 3.04.030(e). By its own admission, the City did not initiate this inquiry until nearly two years after it had awarded a no-bid contract to LFA based on one person's unilateral and self-serving representations of his own qualifications, and only after it had expended millions of dollars of public funds on the project. (FAC ¶¶3, 61, 70)

Even if there had been a determination that LFA was a "sole source" of the desired services, a sole source contract could not legally have been awarded without written determination following a "good faith review of available sources." Rocklin Municipal Code § 3.04.090(B). Alternatively, the City might also have determined that no competitive bidding was required because there were "limited and unique circumstances" which made it "impossible, or not in the public interest" to open the contract to multiple bidders. Rocklin Municipal Code § 3.04.090(E). Even in those circumstances, the City would have been required to submit a written statement of any such determination to the City Clerk, and that determination would have required some level of inquiry on the part of City staff before recommending that extraordinary process to the City Council. Id.

It is the duty of the Rocklin City Manager to "oversee the proper enforcement of all ordinances, rules and regulations." Rocklin Municipal Code § 2.20.040. The City Attorney is required to approve all contracts for professional services as to form. Rocklin Municipal Code § 3.04.100. There does not appear to be any reasonable basis to have awarded this contract without some minimal effort on the part of City staff and officials to perform due diligence before recommending the contract to the City Council.

LFA made no secret of where he had entered into related business endeavors with other municipalities. (FAC ¶¶29, 30-33, 36-40, 42) If the City in January 2017, had conducted even minimal due diligence by contacting its municipal counterparts in cities where LFA had done business before awarding this contract, it would have discovered:

1. The City of Dallas terminated an entity associated with Defendant Busch for failure to meet financial obligations in 2008. (FAC ¶¶17, 41)
2. In 2015 Defendant Busch lost a majority interest in his Texas entities while in default to third party lenders and Texas cities. (FAC ¶41)
3. In April 2016, a long-term agreement with an entity associated with Defendant Busch was terminated by the City of White Settlement, Texas because the entity was indebted

services, and for public works projects, without proper justification or to avoid the authorization limits, is prohibited.")

to the city by almost $1 million after the entity failed to honor its obligations. (FAC ¶¶18, 41)

4. In July 2016, the federal government issued citations and fined Defendant Busch's entities approximately $86,000 for violation of child labor laws. (FAC ¶¶21, 41)
5. In December 2016 the City of Pflugerville ended its long-term agreement with a Busch entity because it was indebted to the City by "almost over" $400,000. (FAC ¶¶19, 41)

"Where a representation is made of facts which are or may be assumed to be within the knowledge of the party making it**,** *the knowledge of the receiving party concerning the real facts, which shall prevent his relying on and being misled by it, must be clearly and conclusively established by the evidence."* McMahon v. Grimes, 206 Cal. 526, 536–37, 275 P. 440 (1929) (emphasis added). Where applicable statutes established a duty of due diligence on professional contract managers and a clear trail of breadcrumbs leading up to "materially important" information (FAC ¶32, 34) was laid at the City's feet, the City may fairly be charged with this knowledge as a matter of law.

In addition to the statutory duty of protecting the public finances by awarding professional service contracts "on the basis of demonstrated competence and on the professional qualifications", the City in this case did have at least inquiry notice in the form of public comment at the City Council meeting, the only venue in which LFA's contract proposal was ever objectively and transparently evaluated by the City. (FAC ¶35) At the meeting in which the City Council met to consider whether to enter the Master Agreement, a Councilmember raised a question about LFA's existing adventure parks that formed the basis for his qualification to perform similar work for the City after a member of the public raised a question regarding "cessation of operating agreements in two Texas cities." (FAC ¶38) *See,* Greene v. Locke-Paddon Co., 36 Cal.App. 372, 374 (1918) (plaintiff had a duty to investigate where he was warned and put on notice and so lost his right to rescind a contract "by his delay in pursuing with reasonable diligence a proper inquiry . . . .")

The City's Opposition to this motion repeatedly casts itself as a "susceptible victim", City's Opposition at 10, even a "fool" who should not be "held to the standard of precaution or of minimum knowledge of a hypothetical, reasonable man." Blankenheim at 1475. The City argues that it should not be "thrust into the role of investigator to assess Defendants' statements." City's Opposition at 9-10.

"What would constitute fraud in a given instance might not be fraudulent when exercised toward another person. The test of the representation is its actual effect on the particular mind ..." (*Wilke v. Coinway, Inc.* (1967) 257 Cal.App.2d 126, 138 [64 Cal.Rptr. 845].) Blankenheim v. E. F. Hutton & Co., 217 Cal. App. 3d 1463, 1475 (1990)**.** In this case, LFA's statements were directed at professional public servants who were bound by multiple statutes

to follow contracting procedures for the purpose of avoiding exactly the situation they now claim to find themselves in.

City argues that the question of whether its reliance on LFA's representations were reasonable is a question of fact and cannot be determined by the court on a motion for judgment on the pleadings. "*Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion*, the question of whether a plaintiff's reliance is reasonable is a question of fact." Blankenheim at 475 (emphasis added). The context of this case as governed by public procurement laws converts the determination of reasonable reliance into a question of law. It cannot be disputed, as a matter of law, that the City of Rocklin owed a duty of due diligence under applicable state and local laws to conduct at least a minimal inquiry into the responsibility of a person or entity to whom the agency intended to award a public contract.

Plaintiff's motion for judgment on the pleadings is granted as the First Cause of Action, with leave to amend.

Second Cause of Action (Fraud)

The Second Case of Action for fraud relates to the representations made by LFA as to the anticipated attendance levels, anticipated construction costs and resulting forecasts of profitability for the adventure park. (FAC ¶¶84-95)

The Complaint alleges that Busch "failed to disclose the reasonable and accurate attendance and operating profit projections for the adventure park before the parties signed the Master Agreement and Operating Agreement". (FAC ¶90) "Defendants further failed to disclose the reasonable and accurate amount of capital necessary to design, construct and operate the adventure park." (FAC ¶89)

Specifically, the City alleges that LFA made the following representations that fall within the Second Cause of Action:

1. June, 2016, before the Master Agreement was executed by the parties, which projected attendance of 100,000 people in the first year and profits of $719,395, and $9.8 million in projected profits for the first ten years of operation. (FAC ¶86)
2. March 2017, an estimate of $3.25 million in construction costs. (FAC ¶87)
3. July 2017, which projected attendance of 90,200 people in the first year and profits of $490,000 (FAC ¶88)
4. August 2017, which projected attendance of 95,000 people in the first year and profits of $498,160, and $2 million in projected profits for the first three years of operation. (FAC ¶88)

5. March 2018, which projected attendance of 95,000 people in the first year and profits of $498,160, and $2 million in projected profits for the first three years of operation. (FAC ¶88)
6. April 2018, the parties executed the Operating Agreement with Exhibit G reflecting projected attendance of 95,000 people in the first year and profits of $498,160, and $2 million in projected profits for the first three years of operation. (FAC ¶88)
7. October 2018, after the parties had executed the Operating Agreement, LFA provided an estimate projecting attendance of 62,000 people in the first year and profits of $194,800, and $600,000 in projected profits for the first three years of operation (FAC ¶89)

LFA argues that "to be actionable, a misrepresentation must be of an existing fact, not an opinion or prediction of future events", citing Nibbi Brothers, Inc. v. Home Federal Sav. & Loan Assn. 205 Cal.App.3d 1415, 1423 (1988), Brakke v. Econ. Concepts, Inc., 213 Cal.App.4th 761, 769 (2013). LFA further argues that expressions of opinion cannot be the basis of a fraud claim, citing Borba v. Thomas, 7 Cal.App.3d 144, 152 (1977).

City counters that these future financial projections were actionable misrepresentations because LFA "portrayed themselves as specially qualified and with superior knowledge" and that the financial projections "were presented as fact." City's Opposition at 12-13, citing Cohen v. S&S Constr. Co. 151 Cal.App.3d 941, 946. The Cohen case was brought by homeowners in a residential community against a developer and its sales agent. The plaintiffs in that case had bought premium "view lots" based on the defendants' assurances that that applicable covenants and deed restrictions protected the view from their lot and the architectural committee would not approve plans which would interfere with the view. The Court noted that a housing developer is strictly liable for breaches of a fiduciary duty to a homeowner's association pursuant to Corporations Code § 5231, citing Raven's Cove Townhomes, Inc. v. Kruppe Development Co. (1981) 114 Cal.App.3d 783, and that such statutory liability extends to individual homeowners. Cohen v. S & S Constr. Co. at 945.

City asserts that the following Cohen factors are met in this case:

> Generally, actionable misrepresentation must be one of existing fact; "predictions as to future events, or statements as to future action by some third party, are deemed opinions, and not actionable fraud ...." (Citations.) But there are exceptions to this rule: *"(1) where a party holds himself out to be specially qualified and the other party is so situated that he may reasonably rely upon the former's superior knowledge; (2) where the opinion is by a fiduciary or other trusted person; [and] (3) where a party states his opinion as an existing fact or as implying facts which justify a belief in the truth of the opinion."*

Cohen v. S & S Constr. Co., 151 Cal. App. 3d 941, 946 (1983) (emphasis added.)

As all of these financial projections involve future conditions, it cannot be said that the City could understand these assertions as "existing facts," so the City must be arguing that LFA's representations implied facts that justified its "belief in the truth of the opinion[s]." Cohen at 946.

As outlined in the discussion regarding the first cause of action, above, the City's staff was made up of professionals with experience in public contracting who were subject to duties defined by the Rocklin Municipal Code. The City has not cited any authority for the proposition that an independent contractor providing professional services to develop preliminary design drawings owes a fiduciary duty to the City. *See*, McCauley v. Dennis, 220 Cal. App. 2d 627, 635, (1963) ("Defendants contend that merely because defendant relied upon the representations made by plaintiff a fiduciary relationship thereby arose. Defendants cite no authorities so holding.")

The June, 2016 financial projection fell within the class of self-serving, unilateral representations made by a party interested in the future award of a public contract. There was no duty LFA owed to the City at a time before the parties executed a contract. Having made no investigation into LFA's qualifications to meet the needs of the City, the City can hardly argue that LFA appeared "specially qualified", or that the City was so situated that it could "reasonably rely upon the former's superior knowledge," or that Busch was "a fiduciary or other trusted person" in June, 2016.

The only estimation of construction costs alleged to be fraudulent by the City was made in March, 2017. At that time, LFA was engaged to provide 30 percent of a design of the project in anticipation of the issuance of a design-build contract. The City had yet to obtain construction bids on the project. (FAC ¶48) To the extent City had any expectation of LFA's expertise, it was in the area of 'adventure park' operation, not as a construction estimator. (FAC ¶¶22, 23, 33) The scope of work called for LFA to produce "preliminary" construction cost estimates, based on City "preliminarily-approved programmed items, areas, volumes or other unit costs." Master Agreement Exhibit C. These cost estimates were only one of eight work product items that were grouped under "Schematic Design Plans" that LFA was tasked to complete within two weeks of the execution of the Master Agreement and well before the City's preparation of construction contract bid documents. Master Agreement Exhibit C1. A "belief in the truth of the opinion" regarding future financial projections is hardly justifiable under those circumstances.

Between March 2017 and April 2018 there are several representations at issue, but they do not vary considerably. Each estimate projects 90,000-95,000 people in attendance, between $490,000-500,000 of profit in the first year, and $2 million in projected profits for the first three years of operation. (FAC ¶88) During that period LFA was contracted for work under the "Design Build" phase of the Master Agreement, which provided that "LFA will not be involved in

the construction of the Project not as a member of the design-build entity selected, and shall only be involved as a consultant to the City as set forth herein." Master Agreement, Exhibit C2. At the $195 per hour rate and a limitation of $5,000 per month, LFA could not dedicate more than 26 hours per month to the project. Master Agreement, Exhibit D2. Within that time limitation, there were eight listed tasks, one of which was "review of budgets and job costing." Master Agreement, Exhibit D1. In short, LFA during that time were not paid to provide economic projections of the finished project and did not control any budgeting decisions or oversee construction costs. LFA could only review the materials it was provided by the City and cannot be credited with special qualifications or superior knowledge such that the City could reasonably rely on LFA's estimates, nor did LFA have any contractual duty to provide those estimates.

The City opened the adventure park in September 2018 with LFA as the operator pursuant to the Operating Agreement. (FAC ¶60) It was at this time that LFA submitted the October 2018 financial estimates that were so low that the City was startled into beginning to investigate the qualifications of its contractor. (FAC ¶61) This final estimate does not appear to be the basis for City's fraud claims. Rather, it stands out as the one reliable estimate that was made after construction was completed and the park was opened to the public. As the City notes, "the 10/18 Pro-Forma unequivocally established that LFA would never meet its financial obligations to the City." Id. Accordingly, whether the October 2018 claim was false is not part of this analysis. The City does not allege that it relied on the October 2018 claim to its detriment.

Defendants' motion for judgment on the pleadings is granted as the Second Cause of Action, with leave to amend.

Third Cause of Action (Negligent Misrepresentation)

> The elements of a negligent misrepresentation are "(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." Negligent misrepresentation does not require knowledge of falsity, unlike a cause of action for fraud. (*Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243, 70 Cal.Rptr.3d 199.)

Tindell v. Murphy, 22 Cal. App. 5th 1239, 1252 (2018).

As discussed at length above, regardless of LFA's intentions in making the representations, the City cannot claim that it justifiably relied on LFA's representations leading up to the execution of the Master Agreement. Nor can the City have reasonably relied on future economic forecasts made by LFA before and after the execution of the Master

Agreement in making decisions to spend millions of dollars of public funds in pursuit of the project.

Accordingly, the City cannot maintain a cause of action for negligent misrepresentation, and LFA's motion for judgment on the pleadings is granted as to the Third Cause of Action, with leave to amend.

Fourth Cause of Action (Business and profession Code § 17200)

Plaintiff has dismissed this Cause of Action as of April 17, 2023, and so the court need not address this issue.

Fifth Cause of Action (Breach of Contract)

LFA argues as a matter of law a breach of contract claim based on the Master Agreement must fail because the Master Agreement was either fully performed or superseded by subsequent agreements.

The City counters that nowhere in the FAC is it alleged that the Master Agreement is not in force. The City points out that that because the City declined to append any of the parties' subsequent related contracts as exhibits to or to refer to them in the FAC, and because LFA did not seek judicial notice of the Operating Agreement, the court cannot review the terms of the agreements between the parties pursuant to this motion for adjudication on the pleadings.

The City is correct that based on the face of the FAC and the matters of which the court is required to take judicial notice there is insufficient information to evaluate whether or not the Master Agreement or any part of it remains in effect as a matter of law.

Defendants' motion for judgment on the pleadings is denied as the Fifth Cause of Action.

Seventh Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing)

LFA argues as a matter of law a claim for breach of implied covenant of good faith and fair dealing based on the Master Agreement must fail because the Master Agreement was either fully performed or superseded by subsequent agreements.

For the same reasons that the motion must be denied as to the Fifth Cause of Action, Defendants' motion for judgment on the pleadings is denied as the Seventh Cause of Action.

Ninth Cause of Action (Money Had and Received)

> "A cause of action for money had and received is stated if it is alleged [that] the defendant 'is indebted to the plaintiff in a certain sum "for money had and received by the defendant for the use of the plaintiff." ' ..." (*Farmers Ins. Exchange v. Zerin, supra,*

> 53 Cal.App.4th at p. 460, 61 Cal.Rptr.2d 707, quoting *Schultz v. Harney* (1994) 27 Cal.App.4th 1611, 1623, 33 Cal.Rptr.2d 276.) The claim is viable " 'wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter.' " (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 937, 125 Cal.Rptr.3d 210, quoting *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 599, 124 Cal.Rptr. 297.) As juries are instructed in CACI No. 370, the plaintiff must prove that the defendant received money "intended to be used for the benefit of [the plaintiff]," that the money was not used for the plaintiff's benefit, and that the defendant has not given the money to the plaintiff.

Avidor v. Sutter's Place, Inc., 212 Cal. App. 4th 1439, 1454 (2013)

This Cause of Action alleges that LFA is indebted to City for *all amounts* that City expended to design, build and operate the adventure park. (FAC ¶131) The FAC's allegations fail as a matter of law because City alleges that "the total cost of construction was approximately $7,000,000, which was over 200% more than LFA's construction estimate." (FAC ¶49) City does not allege that LFA received these funds. At best, these funds may be alleged to be damages incurred by City as a result of LFA's conduct, not money in the possession of LFA.

Defendants' motion for judgment on the pleadings is granted as the Ninth Cause of Action, with leave to amend.

Eleventh Cause of Action (Declaratory Relief)

Plaintiff filed a dismissal of this Cause of Action as of April 17, 2023; however, that dismissal appeared to apply only to LFA, not to Defendant David Busch. However, in City's Opposition (City's Opposition at 20) it declares its intention to have entirely dismissed this Cause of Action as to both Defendants, and so the court need not address this issue.

Twelfth Cause of Action (Unjust Enrichment)

City alleges that LFA sold long-term and season tickets to the park in a manner that was outside the scope of the Operating Agreement and has been unjustly enriched by the proceeds of those sales. LFA counters that an unjust enrichment claim cannot be maintained when there is an express contract in place governing the transactions at issue. The court has no way of determining the term or scope of the Operating Agreement that was in force at that time from the face of the FAC or the from the terms of the Master Agreement.

For the same reasons that the motion must be denied as to the Fifth and Seventh Causes of Action, Defendants' motion for judgment on the pleadings is denied as the Twelfth Cause of Action.

Motion for Summary Judgment/Summary Adjudication

Moving past LFA's motion for judgment on the pleadings, the court on City's motion for summary judgment/summary adjudication may look beyond the face of the pleadings to determine whether there is a triable issue of fact for each challenged claim such that the claim should be allowed to advance to trial, or whether a challenged cause of action fails as a matter of law:

> A defendant may move for summary judgment in any action or proceeding by contending that the action has no merit. (Code Civ. Proc. § 437c, subd. (a).) Section 437c, subdivision (c), *requires* a trial court to grant summary judgment if all the papers and affidavits submitted, together with "all inferences reasonably deducible from the evidence" and uncontradicted by other inferences or evidence, show that "there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law...." (Citations). Where the defendant is the moving party, he or she may meet the burden of showing that a cause of action has no merit by proving either that (1) one or more elements of the cause of action cannot be established, or (2) there is a complete defense to that cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show the existence of a triable issue of material fact as to that cause of action or defense. (Citations). A defendant moving for summary judgment may establish that an essential element of the plaintiff's cause of action is absent by reliance on competent declarations, binding judicial admissions contained in the allegations of the plaintiff's complaint, responses to discovery, and the testimony of witnesses at noticed depositions. (Citations).

Sangster v. Paetkau, 68 Cal. App. 4th 151, 161–62 (1998) (footnotes omitted).

City, Plaintiff with respect to its original Complaint, is now Cross-Defendant for the purposes of this motion.

Factual Background on Summary Judgment/Summary Adjudication Motion

Because the court on this summary judgment/summary adjudication motion can now look beyond the face of the pleadings, a more robust review of the facts is appropriate at this stage.

As stated above, the parties initially entered the Master Agreement in January, 2017, which envisions three phases of the project. The first phase ("Thirty Percent Design Phase" involved design and planning. The second phase ("Design-Build Assistance Phase") anticipated the award of a design-build construction contract to a third party for the build-out of an "adventure park." In the third phase, the Park would open to the public and would be operated by LFA in a public-private partnership in which LFA would manage operations and the City would receive a revenue share. The Initial Term of the Operating Phase was to begin on the first

date that the Park "is open for business[3]" and was to continue for 15 years. Master Agreement, Exhibit E, ¶ 2.1; Undisputed Fact #7. LFA was to have the right to extend the initial term of the Operating Phase for two additional ten-year periods. Undisputed Fact #8.

The Recitals to the Master Agreement declare that "WHEREAS, nothing in this Agreement requires the City and LFA to proceed through all phases of the project depending on financing, environmental review, the entitlement process and the ability of the City and LFA to terminate this Agreement at any time during the design and construction of the Project as outlined herein." Undisputed Fact #2.

The Master Agreement, ¶ 3(c), provided that:

> The parties recognize that all of the details of the Project are not known at the time of execution of this Master Agreement and refining details associated with the elements of the Project may be added to the Operating Terms as permitted in the Operating Terms.

Undisputed Fact #3.

On May 26, 2017 the City issued a Request for Proposals for the construction of the Park. Busch Declaration at ¶ 9. A design-build contract was awarded to Bonsai Designs, LLC. Undisputed Fact #21. Construction of the Park began by January, 2018. Undisputed Fact #25.

During 2018, as construction proceeded, LFA became concerned over the design of the Park. It raised with City the apparent the elimination of certain "adventure" features of the Park that had been expressly listed in the Amended Operating Agreement, (*e.g.* Wall Cargo Net climb, King Swing, Boulder Climb, Stream Play area, swinging bridges, history/nature trail). Busch Declaration at ¶¶10, 12, 14. LFA also became concerned about non-adventure elements of the Park that were not completed in accordance with the Amended Operating Agreement, such as plumbed toilets, drinking fountains, metered electrical service, food service facilities, walkway, "picnic pavilions" and a gift shop structure. Id. at ¶14.

These departures from LFA's expectations, and the changes to the terms of the Operating Agreement when the Amended Operating Agreement was adopted, substantially altered LFA's financial projections for the project. Id. at ¶¶14, 18.

On April 24, 2018, the Rocklin City Council unanimously adopted a resolution authorizing the City Manager to execute an "amended and restated Adventure Park Operating Agreement" ("Amended Operating Agreement") between the City of Rocklin and LFA.

---

[3] The Amended Operating Agreement anticipated issuing a Notice to Proceed "on the date on which the City authorizes LFA to proceed with its work for or in preparation of opening the [Park]. Elsewhere, the Amended Operating Agreement anticipated that this Notice to proceed would be issued "prior to the anticipated opening day of the adventure park," presumably to allow LFA to enter the Park for the purposes of preparing the premises to open to the public. Amended Operating Agreement ¶¶ 1.1.21, 6.6.

Undisputed Fact #29. The Recitals section of the Amended Operating Agreement stated that the new contract was intended to "amend and restate the terms of the operating phase" of the Park. Undisputed Fact #33. City staff also represented to LFA that the new agreement was necessary to conform the agreement to requirements for the City's use of bond funds for Park construction, including the requirement to make all parking areas open to the public, and the need to reduce the term of the agreement by 11 years. FACC ¶¶ 104-105. Specific changes included in the new Amended Operating Agreement that differed from the original Master Agreement Operating Phase terms included the following:[4]

1. Section 2.2: The duration of the City's option to extend the Operating Agreement beyond the original term was reduced from "two (2) additional ten (10) year terms" to "One (1) additional five (5) year term followed by one (1) additional four (4) year term". This reduced the potential contract duration by 11 years. Undisputed Fact #35.
2. Article 4: The Master Agreement provided for LFA's exclusive use of the designated "Exclusive Parking Area" during Park operations. Undisputed Fact #9. In the Amended Operating Agreement there was no provision for an Exclusive Parking Area, nor for paid parking, and Park guests were to be provided with free parking if they had a Park ticket or reservation for that day. The City, and not LFA, retained control of parking areas. Undisputed Fact #36.
3. Section 4.3: A provision was added requiring the parties to meet annually to plan for special events. This replaced a provision that would have required the City to give LFA notice of special events so that it could place signage and direct traffic away from Exclusive Parking Areas that LFA would have controlled under the Master Agreement.
4. Section 7.2.1: A Master Agreement provision that would have allowed LFA to make repairs of latent defects, faulty installation or faulty construction by the design build contractor and claim reimbursement for the costs was eliminated. Instead, the City's prior authorization was required for any such repairs in the Amended Operating Agreement.
5. Section 7.3.4: The City agreed to advance $90,000 of pre-opening expenses in addition to $150,000 that had previously been anticipated "due to the delay in project construction," and LFA agreed to prioritize repayment of these costs above all other payments due to City that were listed in the agreement.
6. Section 9.1(a): Anticipated debt service repayment was increased from $3.25 million to $4 million.
7. Section 9.1(f): The revenue split between the parties was altered to increase the share of net operating revenues due to City from 70 (LFA)/30 (City) on net operating revenue to 65 (LFA)/35 (City) until the City's debt service payment amount was repaid.

[4] Busch Declaration, Exhibit E.

8. Section 32: To an existing section governing the parties' agreement to execute and record a memorandum of agreement for the purpose of putting third parties on notice of the terms of the agreement, the following language was appended:

   Each party acknowledges and agrees that as of the date of the execution of this Agreement, the other party is in full compliance with the terms of the Master Agreement and the terms and conditions set forth in this Operating Agreement, and no default exists on the part of either party. Undisputed Fact # #38.

On May 22, 2018, the City issued a Notice to Proceed to LFA titled "Partial Opening Agreement". Busch Declaration at ¶16, Exhibit F. That Notice granted LFA permission to operate the "Kids Zone" and "Paddle Boats" features beginning on May 27, 2018 "and on weekends thereafter". The City stated that "while the initial target date for the Park's opening was May 31, 2018", only those two features were included in the Notice to Proceed.

The Notice to Proceed also deviated from the terms of the Amended Operating Agreement in several respects:

1. LFA was required to accept the condition of the Park "as is", with the understanding that construction was still ongoing within fenced off areas of the Park.
2. LFA was required to "assume all risks" associated with opening areas of the Park prior to the City issuing a Certificate of Occupancy.
3. LFA was required to agree to indemnify the City from "the potential dangerous condition posed by the Park due to or as a result of the ongoing construction activity within areas of the Park."
4. LFA was required to agree to stand in the shoes of the City with respect to the City's agreement to indemnify the construction contractor while the park was in open to the public "for any guests or vendors providing services to guests in the Park." This responsibility would cease as soon as the City accepted the construction work.
5. LFA was required to expand its insurance coverage to name all of the City's construction contractors and their "respective representatives, partners, designees, officers, directors, shareholders and employees" as additional insureds.
6. LFA was required to have all guests to the Park and the employees of all vendors and subcontractors sign a release of liability form.

The Notice to Proceed further stated that this partial permission to open and operate portions of the park could be revoked at any time in the City's sole discretion. Id.

The Notice to Proceed was signed by LFA and by the City Manager but was not authorized by the City Council or approved as to form by the City Attorney.

On September, 2018, the entire Park was formally opened. (FAC ¶58) On October 14, 2018, LFA provided the City with revised financial projections with substantially lowered expectation of profitability. (FAC ¶60)

City sent an invoice to LFA for the first quarter debt service payment that was due by November 15, (Amended Operating Agreement § 9.1(a)(i)) but the invoice was not paid. (FAC ¶62) On November 21, 2018, the City sent LFA a letter detailing contract performance issues and requested that LFA "cure the defaults." (FAC ¶66)

On December 7, 2018, LFA notified City of "its breaches and defaults under the Master Agreement and demanded that the City cure such defaults". (FACC ¶ 88)

On January 7, 2019, the parties entered into an Exit Agreement that provided for LFA to cease operation of the Park by January 9, 2019. (FAC ¶ 71)

On February 13, 2019, the City of Rocklin filed a lawsuit against LFA.

LFA's Cross-Complaint

On January 30, 2020, LFA filed a Cross-Complaint against City. On October 19, 2020, LFA filed a First Amended Cross-Complaint ("FACC"), and it is the City's January 6, 2023, motion for summary judgment/summary adjudication with respect to this FACC that is at issue in this hearing. As to the City, the FACC lists three causes of action 1) breach of contract (Master Agreement), 2) breach of the covenant of implied good faith and fair dealing (Master Agreement), 3) recission (Amended Operating Agreement). The three causes of action and their specific allegations relevant to this hearing are listed below:

First Cause of Action (Breach of Contract).

The cross-complaint alleges breach of contract based up on the following actions by City:

1. "failing and refusing to allow LFA to participate in each phase of the development" of the Park (FACC ¶87(a))
2. "failing and refusing to provide LFA the exclusive right to operate and share in the profits from the [Park] for an initial 15-year term with renewal rights to two additional 10-year periods: (FACC ¶87(b))
3. "terminating the operating phase of the Master Agreement without notice of default or the opportunity to cure and without proper written notice of termination" (FACC ¶87(c))
4. "failing and refusing to provide LFA with exclusive use of a parking area for which LFA was entitled to charge a fee for parking" (FACC ¶87(d))
5. "failing and refusing to deliver the [Park] with specified adventure elements (attractions) and guest amenities" (FACC ¶87(e))

6. "failing and refusing to install and maintain all utilities to the [Park] . . . necessary to and used in connection with LFA's occupancy of the [Park] " (FACC ¶87(f))

Summary Adjudication Issues (FACC ¶¶79-90)

City requests summary adjudication of the following matters falling within the First Cause of Action:

1. FACC ¶87(a)

There is no triable issue of fact as to whether LFA had a contractual right to participate in the development of the park prior to the effective date of the Operating Agreement. Exhibit C to the Master Agreement defines the rights and obligations of the contracting parties in the first "consulting phase" of planning for the Park, titled the "Thirty Percent Design Phase." During that phase, "City shall pay LFA for services" in accordance with bills submitted by LFA. LFA was to provide "design, programing and consulting services . . . which will result in Schematic Development Plans . . . and Design Development Plans . . . to be used as a Design Criteria Package for the possible 100% design and construction of the [Park] . . . ." Master Agreement, Exhibit C1, Section 1 ("Scope of Work"). All of its work during this phase was subject to the review and approval of the City. Id.

Exhibit D to the Master Agreement governs the second phase of the contract, titled the "Design Build Assistance Phase." This phase involved as-needed consulting work. With reference to this second, Design Build Assistance Phase of the project, the Master Agreement (Exhibit D, Section 1) declares that:

> The parties are aware of limitations regarding a party performing design build construction work and later operating work and specifically limit LFA in this agreement to providing technical advice to a separate design build or other contractor as requested by the City. LFA will not be involved in the construction of the Project nor as a member of the design-build entity selected, and shall only be involved as a consultant to the City as set forth herein. Undisputed Fact #4.

This language implicitly refers to Cal. Government Code § 22164(a)(2), which prohibits a public agency from issuing a contract in which a design-build contractor is granted an operating license for the built facility[5]. Based on this express language in the Master Agreement, and the express reference to the underlying prohibition in California law against the award of any operating agreement to any contractor that had substantial involvement in a design-build phase of a project, LFA cannot claim to have any reasonable expectation that it would be

[5] The procurement process for design-build projects "shall not include a design-build-operate contract for any project. The documents . . . may include operations during a training or transition period but shall not include long-term operations for any project. Cal. Govt. Code §22164(a)(2).

included in the design-build phase beyond the completion of the contract deliverables for the initial Thirty Percent Design Phase and minimal as-needed consulting assistance in the Design-Build Assistance Phase. Thus, LFA cannot assert based on express contract language or reasonable contract interpretation that it was unfairly excluded from selecting or overseeing the design-build contractor or in dictating the final designs for the Park in accordance with its own expectations. (*See,* Cross Complaint at ¶¶ 87(a), 100(a)-(f), 100(i), 100(k)).

This conclusion is further supported by the language of the Master Agreement at Exhibit E, Section 7.2.4, and of the Amended Operating Agreement at Section 7.2.4:

> City and LFA envision, subject to environmental review, and issuance of a CUP, to the inclusion in the proposed initial Adventure Park development of similar amenities and elements as identified in Exhibit D. The parties acknowledge that the attractions, facilities and improvements will not be static and will change from time to time over the Term of [the] . . . Operating Phase.

Undisputed Facts #10, 37. *See also,* Master Agreement ¶3(c).

With respect to Undisputed Fact #19, LFA did refer to a Recital in the Master Agreement stating that "the City has an interest in working with LFA *as a consultant* to develop a *preliminary* design, *assist* the City during the design-build process and ultimately have LFA operate a family adventure park" (emphasis added). This general language of a single contract recital is not sufficient to overcome specific provisions in substantive sections of the applicable agreements, nor is it sufficient to supplant the primary authority of City officials to make decisions regarding a major public works project.

The City's motion is granted with respect to this allegation, with leave to amend.

2. <u>FACC ¶87(b)</u>

The City's argument in favor of its motion on this point is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to this allegation.

3. <u>FACC ¶87(c)</u>

The City's argument in favor of its motion on his point is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

There are additional triable issues of material fact as to whether the Operating Agreement phase of the Master Agreement had commenced at the time the City terminated the agreement, which would have limited the City's rights of termination.

The City's motion is denied with respect to this allegation.

4. FACC ¶87(d)

The City's argument in favor of its motion on his point is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to this allegation.

5. FACC ¶87(e)

Exhibit D of the Master Agreement lists features of the Park as proposed at the inception of the contract. However, these features were specifically made subject to environmental review, and the Master Agreement, ¶7.2.4, expressly stated that "[t]he parties acknowledge that the attractions, facilities and improvements will not be static and will change from time to time over the Term of the master Agreement and the Operating Phase." Undisputed Fact #10. *See also,* Master Agreement ¶3(c).

The City's motion is granted with respect to this allegation, with leave to amend.

6. FACC ¶87(f)

The City's argument in favor of its motion on this point is that the City denies that LFA is entitled to recission of the Amended Operating Agreement. However, the issue of recission of the Amended Operating Agreement involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to this allegation.

Second Cause of Action (Breach of the Covenant of Implied Good Faith and Fair Dealing)

The cross-complaint alleges breach of the covenant of implied good faith and fair dealing based up on the following actions by City:

1. "hiring a contractor, Bonsai, that was unlicensed, not registered with the DIR, and unqualified to perform the design or construction/installation of the adventure elements [of the Park]" (FACC ¶100(a))
2. "disregarding LFA's designs and drawings for the [Park] and allowing others to completely redesign the [Park]" (FACC ¶100(b))

3. "failing and refusing to allow LFA to consult/advise with respect to the design and construction of the [Park]" (FACC ¶100(c))
4. "failing and refusing to provide a family-friendly [Park] with theming to reflect an 1800's mining town, as contemplated by LFA's design of the [Park] and as referenced as a basis for ECS's revenue projections for the [Park]" (FACC ¶100(d))
5. "acting as the general contractor for the project despite admitting that the City lacked the expertise to develop the [Park]" (FACC ¶100(e))
6. "mismanaging subcontractors, leading to significant delays beyond the desired opening in late summer 2018 despite time being of the essence" (FACC ¶100(f))
7. "coercing and improperly inducing LFA to sign an Amended Operating Agreement without consideration, under false pretenses and under financial duress based on cost overruns created by the City's own conduct" (FACC ¶100(g))
8. "claiming anticipatory repudiation of the Master Agreement by LFA before ever delivering the [Park] contemplated by the Master Agreement" (FACC ¶100(h))
9. Rejecting the $4.38 million turnkey bid from WWFI and then spending nearly $15 million without the required contractual elements and seeking recovery of the cost overruns from LFA" (FACC ¶100(i))
10. "failing and refusing to mediate in good faith, breaking the confidentiality agreement in the mediation in an effort to release information in the press and negotiating a new operating agreement with Bonsai prior to the conclusion of mediation" (FACC ¶100(j))
11. "failing to provide facilities that both LFA and ECS through the Independent Feasibility Study, informed the City would generate a substantial portion (25%) of the overall park revenue, including a central building to house amenities such as ticketing, merchandising, a restaurant, and food and beverage kiosks" (FACC ¶100(k))

Summary Adjudication Issues (FACC ¶¶100(a)-100(k))

1. **FACC ¶100(a)**
2. **FACC ¶100(b)**
3. **FACC ¶100(c)**
4. **FACC ¶100(d)**
5. **FACC ¶100(e)**
6. **FACC ¶100(f)**

With respect to FACC ¶¶ 100(a)-100(f), the analysis described above under FACC 87(a) and 87(e) applies to these allegations in the FACC. The court finds as a matter of law that the City had no contractual duty to accede to LFA's design demands. The Master Agreement explicitly provided that the particular features of the Park were subject to change, and gave LFA no decision making authority over the features to be included in the Park.

In addition, the court finds as a matter of law that LFA had no contractual authority over the design-build contractor or the City's discretion in managing the construction process in the Design-Build Assistance Phase of the contract.

The City's motion is granted with respect to this allegation, with leave to amend.

7. FACC ¶100(g)

The City's argument in favor of its motion on this point is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to this allegation.

8. FACC ¶100(h)

The City's argument in favor of its motion on this point is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to this allegation.

9. FACC ¶100(i)

The court finds as a matter of law that LFA had no contractual authority over the design-build contractor or the City's discretion in managing the construction process in the Design-Build Assistance Phase of the contract.

The City's motion is granted with respect to this allegation, with leave to amend.

10. FACC ¶100(j)
11. FACC ¶100(k)

The City's argument in favor of its motion on these points is that the Master Agreement's terms were superseded by the Amended Operating Agreement. However, LFA seeks recission of the Amended Operating Agreement in its Third Cause of Action, and that issue involves triable issues of material fact such that it cannot be resolved on this motion for summary judgment/summary adjudication.

The City's motion is denied with respect to these allegations.

Third Cause of Action (Recission of Amended Operating Agreement)

In the Third Cause of Action LFA seeks recission of the Amended Operating Agreement based on City's misrepresentations, improper conduct and financial duress in demanding execution of the Amended Operating Agreement. The specific conduct on which LFA bases this cause of action are as follows:

1. City misrepresented to LFA that the amendment was necessary to allow the City to access bond funds for the anticipated expenditures, but did not actually utilize bond funds for developing the Park and in fact never intended to use bond funds (FACC ¶104, 106)
2. City insisted that the Amended Operating Agreement require LFA to give up access to the Exclusive Parking Areas, and reduced the term of the agreement from 35 year to 24 years without any reciprocal benefit to LFA (FACC ¶105)
3. City threatened LFA that if it did not agree to execute the Amended Operating Agreement that City would terminate the Master Agreement without cause pursuant to its terms, thereby denying LFA the profits it would derive from the Master Agreement (FACC ¶107)
4. The City's threat to terminate the Master Agreement was solely for the City's own benefit and not for any other proper purpose (FACC ¶108)
5. LFA had no reasonable alternative but to succumb to the City's undue and improper coercion because otherwise it would lose all of its time and effort spent developing the Park as well as the opportunity to operate the Park for profit. (FACC ¶109)
6. City knew that LFA had no bargaining power and had no reasonable alternative but to agree to execute the Amended Operating Agreement "or be unable to recoup any income for LFA's two years of work on the project". (FACC ¶110)

Central to these allegations is LFA's assertion that the City misrepresented the need to make these changes to the Operating Agreement in order to allow the City to meet the conditions that would allow it to access bond funds to cover development costs for the park. (FACC ¶¶104, 106) City responds that bond funds were in fact used and therefore this was not a misrepresentation. Undisputed Fact #27. However, there remains a disputed issue of fact as to whether conditions attached to the use of bond funds actually required these amendments to the Operating Agreement, or whether this was a pretext used by City to convince LFA to agree to terms that greatly advantaged the City and reduced LFA's potential economic returns in the project.

LFA additionally argues that the City's threat to terminate the Master Agreement was an element of the City's coercion to sign the Amended Operating Agreement, (FACC ¶107) to which the City responds that in April 2018 the City had the right to terminate the Master Agreement and that any threat to exercise its existing legal rights cannot amount to coercion.

City also argues that there is evidence in the record that LFA would have signed the agreement anyway, even without the threat of termination. *See,* Undisputed Fact #31.

However, that conclusion is 1) in fact disputed by LFA and 2) the deposition testimony cited by City in support of this "undisputed fact" is equivocal and does not support the City's conclusion in the context of this motion.

Finally, City argues that even if there was a misrepresentation, there was no justifiable reliance by LFA.

Recission Based on Economic Duress

> "The [economic duress] doctrine is equitably based [citation] and represents 'but an expansion by courts of equity of the old common-law doctrine of duress.' [Citation.] As it has evolved to the present day, the economic duress doctrine is not limited by early statutory and judicial expressions requiring an unlawful act in the nature of a tort or a crime. [Citations.] Instead, the doctrine now may come into play upon the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure. [Citations.] The assertion of a claim known to be false or a bad faith threat to breach a contract or to withhold a payment may constitute a wrongful act for purposes of the economic duress doctrine. [Citations.] Further, a reasonably prudent person subject to such an act may have no reasonable alternative but to succumb when the only other alternative is bankruptcy or financial ruin. [Citations.]" (*Id.* at pp. 1158–1159, 204 Cal.Rptr. 86, fn. omitted.)
>
> A party whose consent to a contract has been obtained by economic duress may rescind the contract under certain circumstances. "A party to a contract may rescind the contract.... [¶] (1) If the consent of the party rescinding, ... was ... obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party. [¶]...." (Civ.Code, § 1689, subd. (b).

Chan v. Lund, 188 Cal. App. 4th 1159, 1173–74 (2010).

Whether and/or to what extent the City misrepresented the need to amend the Operating Agreement in order to access bond funds in order to coerce LFA to execute an amendment to the Operating Agreement is a disputed question of fact. Whether the situation was sufficiently coercive to meet the standard for economic duress is a disputed question of fact. It would be inappropriate to dispose of the issues related to the Third Cause of Action on a summary judgment or summary adjudication motion.

Accordingly, the City's motion for summary adjudication of the Third Cause of Action, and the City's motion for summary judgment are denied.

TENTATIVE RULING # 2:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**

2. **DEFENDANT'S MOTION FOR ADJUDICATION ON THE PLEADINGS IS GRANTED AS TO THE FIRST, SECOND, THIRD, AND NINTH CAUSES OF ACTION, WITH LEAVE TO AMEND WITHIN 30 DAYS.**

3. **DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED AS TO THE FIFTH, SEVENTH AND TWELFTH CAUSES OF ACTION.**

4. **DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS MOOT AS TO THE FOURTH AND ELEVENTH CAUSES OF ACTION.**

5. **CROSS-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**

6. **CROSS-DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AS TO FACC ¶87(a), FACC ¶100(a), FACC ¶100(b), FACC ¶100(c), FACC ¶100(d), FACC ¶100(e), FACC ¶100(f) AND FACC ¶100(i) IS GRANTED WITH LEAVE TO AMEND WITHIN 30 DAYS.**

7. **CROSS-DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AS TO FACC ¶87(b), FACC ¶87(c), FACC ¶87(d), FACC ¶87(e), FACC ¶87(f), FACC ¶100(g), FACC ¶100(h), FACC ¶100(j), FACC ¶100(k), AND FACC ¶¶103-111 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. CLAIM OF BRANDYN HERRERA 23CV0515

Petition Hearing - Claim Opposing Forfeiture

Petitioner filed a Claim Opposing Forfeiture of $2,981 on April 11, 2023. No other information is contained in the Petition, except that Petitioner's address is in West Sacramento.

No proof of service is on file.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 26, 2023, IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. DEGOLISH v. PLACER TITLE CO. 22CV1845

(1) Pro Hac Vice

(2) Demurrer

TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023 IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. STOCKTON v. HALLIDAY MANAGEMENT PC20200282

(1) Motion for Summary Judgment
(2) Motion to Compel

Motion for Summary Judgment

This is a personal injury action asserted against multiple parties for injuries sustained while Plaintiff was moving his boat into a storage unit operated by Defendant Smart Self Storage of El Dorado Hills, LLC ("SSS") using a "Trailer Tug Hydro 10" ("Trailer Tug") that was provided by SSS. Gary Risley was employed as a Manager of the SSS property on the day that Plaintiff used the Trailer Tug. Thomastown Builders ("TTB") is one of the named Defendants.

In support of its motion, Defendant TTB argues Thomas Management LLC ("TM") was the business entity responsible for property management of the SSS facility, not TTB. Declaration of Ryan Smith, Dated February 27, 2023 ("Smith Decl.") at ¶5. Defendant declares that Manager Risley was never an employee of TTB. Smith Decl. at ¶8, and that TTB was never involved in the "management, supervision, direction, control, or maintenance of the boat mover" that caused Plaintiff's injuries. Smith Decl. at ¶11. Defendant references Exhibit J to the Declaration of Kathleen Miller, dated March 2, 2023, which is an employment agreement between TM, as the owner of Green Valley Road Self Storage, and Gary Risley, to employ his services as a resident manager for the facility.

Plaintiff counters that according to Gary Risley's deposition testimony (Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant Thomastown Builders, Inc. Motion for Summary Judgment ("Plaintiff's Appendix of Exhibits"), Exhibit 3), Risley repeatedly stated he that was employed by TTB as a Manager for SSS at the time of the incident. It is understandable that if Risley was mistaken as to the specific identity of his employer in his testimony, given that Ryan Smith, who owned both companies, testified that TM and TTB shared an office in a building Smith owned, and that only TM paid rent even though TTB employees also occupied the office. The two companies shared a bookkeeper who was a TM employee but also did work for TTB, and that other TM employees performed tasks for TTB, and that Smith signed checks for both companies. (Plaintiff's Appendix of Exhibits, Exhibit 10).

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a

> burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

On the single issue of the relationship between the corporate defendants TM and TTB and their corresponding relationships to management of the property and supervision of the employees there is a triable issue of material fact with substantial conflicting evidence in the record. Accordingly, TTB's Motion for Summary Judgment is denied.

Motion to Compel Inspection of Plaintiff's Boat and Boat Trailer

Following the incident that is the subject of this litigation, Plaintiffs moved out of state, but incurred expenses to leave the boat and trailer at Defendants' facility to allow for inspection in anticipation of litigation.

On May 21, 2020, SSS's counsel served a Notice of Inspection for July 7, 2020, a to "visually inspect, examine, measure, survey, operate, film, take video of and photograph the boat and trailer that carries it. . . . The inspection will consist of hooking the trailer of the boat, with the boat in place on the trailer to the Trailer Tug so that the experts can see how the Trailer Tug operates. The experts will be allowed to utilize the Trailer Tug, moving the trailer and boat with it. . . . The inspection will consist of photographing the boat and/or trailer, possibly moving it about on its trailer, videotaping it, and measuring it." Declaration of Robert Bale dated May 15, 2023, ("Bale Declaration"), Exhibit 4.

The 2020 inspection allowed the parties to inspect the boat and trailer at the site of the incident and in conjunction with the Trailer Tug equipment at the site. TTB was represented at the inspection by Ryan Smith. Bale Declaration, Exhibit 6.

Following that 2020 inspection Plaintiffs recovered the boat and trailer and moved them to Idaho, where they are currently located. Bale Declaration, Exhibit 10.

On February 27, 2023, defense counsel sent Plaintiff a second request to inspect the boat and trailer that were involved in the incident that is the subject of this litigation. Specifically, the request was to "Laser scan the boat as it sits on the trailer [and] [w]eight [sic]

the boat/trailer combination (on flat ground): Measure weight on each tire and weight on the tongue, all when the tongue is at the height it would be while on the Trailer Tug ball. This will require that we have a way to push the boat and trailer up a short, inclined ramp, and then onto our scales." Bale Declaration, Exhibit 9.

On February 27, 2023, Plaintiff's counsel responded with a "meet and confer" letter expressing that additional inspection should not be required since 1) defense counsel had an opportunity to inspect the boat and trailer at the site of the incident in 2020 and 2) an additional inspection would require counsel to travel to Idaho at great expense. Bale Declaration, Exhibit 10.

On March 14, 2023, Defendants TM and SSS served a Notice of Demand for Inspection to allow counsel, experts and consultants to "visually inspect, examine, measure, survey, operate, film, take video of and photograph the boat and trailer that carries it. . . . The inspection will consist of weighing and scanning the boat and trailer. . . . The inspection will consist of photographing the boat and/or trailer, possibly moving it about on its trailer, videotaping it, and measuring it."

On March 20, 2023, Defendant Smart Self Storage of El Dorado Hills, LLC filed a Notice of Motion to Compel Inspection of Plaintiff's Boat and Boat Trailer. On April 5, 2023, Defendant TTB filed a joinder to the Motion to Compel Inspection.

"Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Cal. Code Civ. Proc. § 2031.310.

"A defendant may make a demand for inspection . . . without leave of the court at any time." Cal. Code Civ. Pro. § 2031.020(a). A supplemental demand to inspect may be made "*any later acquired or discovered* . . . tangible things . . . in the possession, custody or control of the party on whom the demand is made." Cal. Code Civ. Pro. § 2031.050 (emphasis added). In this case, Defendant does not argue that there is any newly acquired or discovered item or information; rather, Defendant seeks a second inspection three years after the original inspection because it has hired a new expert consultant who seeks information as to the distribution of the weight of the boat and trailer, and such data as would be acquired by a laser scan. There is no guarantee that the boat is currently loaded with fuel, water and equipment in the same manner that it was on the date of the incident, so weighing the trailer at the point of each tire and at the front of the trailer are not likely to reproduce the conditions that existed at Defendant's storage facility in 2017.

"The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance . . . or undue burden and expense." Cal. Code Civ. Proc. § 2031.060(b). In this case, Defendants and their litigation consultants have had an opportunity to inspect the boat and trailer on the site of the incident and in conjunction with the Trailer Tug. Any weight and weight distribution information obtained three years later under potentially different circumstances would not necessarily be probative. Specifications for the boat and trailer are accessible through less intrusive means. Under the circumstances, the court finds that there is good cause to deny the Motion to Compel.

TENTATIVE RULING # 5: DEFENDANT THOMASTOWN BUILDERS MOTION FOR SUMMARY JUDGMENT IS DENIED. DEFENDANTS' MOTION TO COMPEL INSPECTION 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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. NAME CHANGE OF KAUTZ 23CV0479

Petition for Name Change

A Petition for Change of Name was filed by the parents of a minor on April 6, 2023. Proof of Publication was filed on May 15, 2023. A background check has been completed as required by law.

TENTATIVE RULING # 6: THE PETITION IS GRANTED AS REQUESTED.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. MAJAIKA v. ROBINSON ENTERPRISES, INC. 22CV1854

Demurrer

TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 11, 2023 IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. MULTI-HOUSING TAX CREDIT PARTNERS III v. CBM-96 LLC 22CV0205

Judgment on the Pleadings

TENTATIVE RULING # 8: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023 IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. NAME CHANGE OF VALLIAMMAL 22CV1330

Petition for Name Change

This petition for a name change was filed on August 22, 2022. Proof of publication was filed on November 4, 2022. The matter was scheduled for hearing and continued on April 14, 2023, March 10, 2023, February 1, 2023, December 2, 2022 and November 4, 2022 due to the lack of a background check for Petitioner, as required by Code of Civil procedure § 1279.5(f).

On May 8, 2023, the court received a letter from Petitioner's mother requesting the matter be continued, as petitioner is currently an inmate in El Dorado County Jail and has been transferred to State Hospital.

TENTATIVE RULING # 9: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, NOVEMBER 17, 2023 IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. DANIELS ET AL v. CROSBY HOMES, INC. ET AL PC20190135

Motion to Strike

TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. NAME CHANGE OF HELTON 23CV0281

Petition for Name Change

This petition for a name change was filed on February 22, 2023. Proof of publication was filed on April 3, 2023. The background check was received on May 25, 2023.

TENTATIVE RULING # 11: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12. NAME CHANGE OF DENNIS 23CV0347

Petition for Name Change

This petition for a name change was filed on March 14, 2023. Proof of publication was filed on April 3, 2023. A background check for petitioner was filed on March 31, 2023.

TENTATIVE RULING # 12: THE PETITION IS GRANTED AS REQUESTED.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

13. RUGER V. COUNTY OF EL DORADO 23CV0238

Petition Hearing

TENTATIVE RULING # 13: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.