

1. BANK OF NEW YORK v. SIERRA OUTDOOR RESORTS

PC20110440

Order to Show Cause

This hearing is held following filing of an Ex Parte Application (“Application”) for a hearing on whether this court should issue an Order determining that an Order of Sale is not required to sell real property located at 7255 Minuet Way, Citrus Heights, California, 95621.

Proof of service of Notice of this hearing was served on the judgment debtor by posting the Notice at his residence, 7248 Minuet Way, Citrus heights, California, on July 6, 2023, and on the residents of the real property at issue by posting at 7255 Minuet Way, Citrus Heights, California on July 6, 2023.

On September 30, 2012, a Judgment in the amount of \$360,736.16 was entered in this action in favor of Bank of New York Mellon Trust Company in its capacity as Indentured Trustee pursuant to an Indenture dated June 1, 2002 (“Plaintiff”). Application, Declaration of Andrew Still, Exhibit 1. On September 19, 2022, Plaintiff assigned its interest in the Judgment to Ciena Capital Funding (“Ciena”). Application, Declaration of Andrew Still, Exhibit 2. Ciena renewed the Judgment on September 22, 2022, for a total amount due of \$675,784.24. Application, Declaration of Andrew Still, Exhibit 3. Notice of the renewal was served on the judgment debtor by US Mail on September 30, 2022, and the renewal was recorded in El Dorado County Official Records on September 29, 2022. Application, Declaration of Andrew Still, Exhibit 4.

A Writ of Execution was issued on March 2, 2023 for a total amount due of \$709,155.59. Application, Declaration of Andrew Still, Exhibit 7. As of June 15, 2023, the balance due is \$724,848.99, and continues to accrue interest at the rate of \$185.15 per day. Application, Declaration of Andrew Still at ¶17.

Ciena has identified two Sacramento County properties that belong to the judgment debtor, 7248 Minuet Way and 7255 Minuet Way in Citrus Heights, Sacramento County. Ciena has correspondence from the judgment debtor indicating that he does not reside at 7255 Minuet Way and has not resided there for the past five years. Application, Declaration of Andrew Still, Exhibit 6. The Application represents that the judgment debtor resides at 7248 Minuet Way, and that his wife resides at 7255 Minuet Way. Application, Declaration of Andrew Sill at ¶¶10, 21. Title to the 7255 Minuet Way property is held by the judgment debtor and his wife as joint tenants.¹ Application, Declaration of Andrew Still, Exhibit 10. There is no current homeowner’s exemption filed for the 7255 Minuet Way property. Application, Declaration of Andrew Still at ¶18.

¹ If the judgment debtor is married:

(a) The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions. Cal. Civ. Proc. Code § 703.110(a).

08-11-23
Dept. 9
Tentative Rulings

Ciena levied the 7255 Minuet Way property through the Sacramento County Sheriff's Department as the levying officer, and the Sheriff's Department advised Ciena that an order for sale is required from this court. Application, Declaration of Andrew Still at ¶14.

Ciena filed the Ex Parte Application on June 16, 2023, pursuant to Code of Civil Procedure § 704.770(a), requesting an Order to Show Cause as to why an Order should not be made determining that a court order of sale is not required to sell the 7255 Minuet Way property.

Code of Civil Procedure § 704.740 prohibits the sale of the ownership interest of a natural person in a dwelling to enforce a money judgment except pursuant to a court order.

"Dwelling" is defined to include "a house together with the outbuildings and the land upon which they are situated." Code of Civil Procedure § 704.710(a)(1).

"Homestead" is defined to include: "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." Code of Civil Procedure § 704.710(c).

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 11, 2023, IN DEPARTMENT NINE.

2. POREIDER v. POREIDER

PFL20200082

Oral Decision

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 11, 2023, IN DEPARTMENT NINE.

3. DEWATER v. HOSOPO CORP. ET AL PC20190143
Review Hearing

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 11, 2023, IN DEPARTMENT NINE.

4. EWING IRRIGATION DISTRICT v. LAND TECH INDUSTRIES, INC.

22CV1565

Order of Examination Hearing

A Notice of Entry of Judgment on Sister-State Judgment was filed with this court on October 28, 2022, for a judgment amount of \$34,828.25. Substituted service of the Notice was effected on November 17, 2022 at the residence of Lawrence Joseph Petretti and filed with this court on December 15, 2022. Service of the Notice was again made on November 30, 2022, by substituted service at the residence of Lawrence Joseph Petretti in his capacity as CEO of Land Tech Industries, Inc. A Writ of Execution was issued on March 10, 2023.

An Application and Order for Appearance and Examination was filed on April 14, 2023 and hearing was set for June 23, 2023, personal service of notice of the examination hearing, meeting the requirements of Code of Civil Procedure § 415.10, was required. Cal. Code Civ. Pro. § 708.110(d). Personal service of the Application was effected on May 17, 2023 and proof of service was filed with the court on May 31, 2023.

At the June 23, 2023 hearing, the court issued a Bench Warrant with bail set at \$2,500, and stayed the warrant until the current hearing date on August 11, 2023.

Following the June 23, 2023 hearing and continuance, Notice of Continuance and Bench Warrant was served on the Defendant by first-class U.S. Mail and proof of service was filed with the court on July 20, 2023.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 11, 2023, IN DEPARTMENT NINE.

5. IN THE MATTER OF J.G. WENTWORTH ORGANIZATIONS, LLC 223CV1115

Petition for Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents. This finding is supported by the payee's Declaration, dated July 28, 2023, filed on August 1, 2023.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits A and B to the Petition. *See also*, Petition at p. 3.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Amended Exhibits A (filed on July 26, 2023) and Exhibit B.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority This finding is supported by the payee's Declaration, dated July 28, 2023, filed on August 1, 2023.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition and its attachments contain the information required by the Insurance Code for court approval of this transaction. The court finds that the proposed transfer is fair and reasonable, and in the payee's best interests.

TENTATIVE RULING 5: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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6. STOCKTON v. HALLIDAY MANAGEMENT ET AL

PC20190220

- (1) Bifurcation of Trial**
- (2) Leave to File Cross-Complaint**
- (3) Undertaking**

Bifurcation of Trial

Code Of Civil Procedure § 598 allows a court to bifurcate a trial by requiring that “the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case.” Bifurcation is available to the court when “the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby.”

The California Supreme Court has stated that the objective of bifurcating trial of an action “is to expedite and simplify the presentation of evidence.” Foreman & Clark Corp. v. Fallon, 3 Cal. 3d 875, 888 (1971), specifically, “to permit the issue of liability in personal injury cases to be tried prior to that of damages when, in the opinion of the court, the facts of a particular case justify it.” Id. at fn. 8.

Defendants claim that without bifurcating liability from damages in this case the Defendants cannot receive a fair trial. They argue that notwithstanding the defense’s assertedly strong position on the issue of liability and causation, that the jury will inevitably be driven by a prejudicial and emotional need to compensate the Plaintiffs for their injuries under any circumstances out of sympathy.

Defendants have not cited any authority or recited any facts that would distinguish this case from any other personal injury case involving damages such that bifurcation of liability from damages would be a convenience to any party or an efficiency in the litigation. The case is not extraordinarily complex. Defendants seem to assume that they will prevail on the liability issue as a matter of course, but that remains to be seen through the course of the trial. Defendants seem to assert that no jury can be trusted to apply the instructions from the court if they feel sympathy for an injury. If this were true then the jury system could rarely if ever be used in personal injury cases. Defendants’ assertions are not supported by factual showings or legal authority.

Leave to File Cross-Complaint

Defendants Smart Self Storage and Thomas Management filed an ex parte motion on July 21, 2023, for an order shortening time for leave to file a Cross-Complaint in this action. At the hearing on July 24, 2023, the court took the matter under submission and later than same day issued an ex parte minute order granting an order shortening time, setting a hearing on the

merits on August 11, 2023. Plaintiff was permitted to file additional opposition papers by July 31, 2023, and Defendants were permitted to file a reply by August 4, 2023.

On August 4, 2023, Defendants filed a Notice of Non-Opposition to Defendants' Motion for Leave to File Cross-Complaint, asserting that Plaintiff filed no opposition to the request; however, on July 21, 2023, Plaintiff did file an opposition, arguing that Defendants essentially have been dilatory in requesting to file a cross-complaint.

The court is cognizant of the fact that trial is quickly approaching and the filing of a cross-complaint may lead to a delay in resolution of the matter; however, Defendants have cited authorities supporting the policy of great liberality in allowing the filing of a cross-complaint absent a showing of bad faith, even on the "eve of trial." (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94; see also *Orient Handle v. United States Fidelity and Guarantee Co.* (1987) 192 Cal.App.3d 684.)

The court cannot find based on the information presented that Defendants are acting in bad faith. Rather, the court sees the need to definitively resolve the matter on its merits, which includes ensuring disputes between all relevant actors are addressed. The court finds that Defendants have made a sufficient showing of the need to resolve any disputes regarding Norman Ragland related to Plaintiff's claim.

The court grants Defendants leave to file a cross-complaint. The cross-complaint must be filed by August 18, 2023.

Undertaking

Defendants Smart Self Storage and Thomas Management have filed a ex parte application to require the out-of-state Plaintiffs be required to post a bond pursuant to Code of Civil Procedure § 1030. Such a bond may be required where the Plaintiff resides out of state and the Defendant can show a reasonable possibility of prevailing in the case. At the hearing on July 24, 2023, the court took the matter under submission and later than same day issued an ex parte minute order granting an order shortening time, setting a hearing on the merits on August 11, 2023. Plaintiff was permitted to file additional opposition papers by July 31, 2023, and Defendants were permitted to file a reply by August 4, 2023.

Plaintiff filed an opposition on July 21, 2023 and again on July 31, 2023. On August 4, 2023, Defendants filed a reply which referenced the court's ruling on a prior summary judgment motion. In his August 7, 2023 filing, Plaintiff objects to the consideration of any evidence offered in the August 4, 2023 reply.

The court agrees with Plaintiff that due process dictates that it cannot consider the new evidence in August 4, 2023 filing – that is, unless Plaintiff has an adequate opportunity to respond. The court is mindful that the threshold of showing a reasonable probability of prevailing on the merits is relatively low; the court need not find that Defendants are likely to prevail, only that the chance of prevailing is reasonable.

Given this low burden and in the interests of resolving the motion on its merits, the court grants Plaintiff leave to file a response to Defendant's reply brief by August 25, 2023. The court continues the hearing to September 8, 2023.

TENTATIVE RULING #6:

(1) DEFENDANTS' SMART SELF STORAGE AND THOMAS MANAGEMENT'S MOTION TO BIFURCATE TRIAL IS DENIED.

(2) DEFENDANTS' SMART SELF STORAGE AND THOMAS MANAGEMENT'S APPLICATION FOR MOTION FOR LEAVE TO FILE A CROSS-COMPLAINT IS GRANTED. THE CROSS-COMPLAINT MUST BE FILED BY AUGUST 18, 2023.

(3) REGARDING DEFENDANTS' SMART SELF STORAGE AND THOMAS MANAGEMENT'S APPLICATION FOR MOTION TO REQUIRE OUT-OF-STATE PLAINTIFFS TO POST AN UNDERTAKING, THE COURT GRANTS PLAINTIFF LEAVE TO FILE A RESPONSE TO DEFENDANT'S REPLY BRIEF BY AUGUST 25, 2023. THE COURT CONTINUES THE HEARING TO SEPTEMBER 8, 2023.

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7. JP MORGAN CHASE v. SULLIVAN

22CV0474

Judgment Pursuant to Stipulation

The parties entered into a Stipulation which conditioned dismissal of the matter upon Defendant's satisfaction of a debt through regular payments as detailed in the Notice of Settlement, filed with the court on October 17, 2022. The court retained jurisdiction pursuant to Code of Civil Procedure § 664.6:

(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Defendant has paid \$2,024.00 of the total \$6,063.38 that was due, and breached the Stipulation Agreement by failing to make a payment on November 26, 2022. The amount of \$4,039.38 remains due to Plaintiff.

Paragraph 9 of the Stipulation Agreement provides: "Upon a default by Defendant in any payment due to Plaintiff under the terms of this Stipulation, Plaintiff shall apply to the court to have the dismissal without prejudice (if applicable) set aside and vacated and to have judgment entered for the Judgment Amount less credit for payment(s) received by Plaintiff.

A proposed Judgment Pursuant to Stipulation was lodged with the court on June 21, 2023.

TENTATIVE RULING #7: JUDGMENT IS ENTERED PURSUANT TO SIPULATION OF THE PARTIES.

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8. PEOPLE OF THE STATE OF CALIFORNIA v. RODRIGUEZ

PCL20190512

Claim Opposing Forfeiture

The People filed a petition for forfeiture of certain funds seized pursuant to the provisions of Health and Safety Code, §§ 11469, et seq. The unverified petition contends: the sum of \$2,775 in U.S. Currency was seized by the El Dorado County Sheriff's Office on or about March 28, 2019; such funds are currently in the hands of the El Dorado County District Attorney's Office; the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358; the claimant/respondent filed a claim opposing forfeiture in which he contends the funds are his; a criminal case pertaining to the property and related allegations of violations of Health and Safety Code, §§ 11351, 11366, 11352(a), and 11379(a) has been filed under case number P19CRF0095; and claimant was arraigned on May 21, 2019. The People pray for a judgment declaring that the money is forfeited to the State of California.

The People state that they do not waive their right to a jury trial, they intend to try the asset forfeiture case in conjunction with the related criminal trial pursuant to Health and Safety Code, §§ 11488.4(i)(3) and 11488.4(i)(5), and the People intend to conduct civil discovery pursuant to Health and Safety Code, § 11488.5(c)(3).

Claimant/Respondent Rodriguez filed a response to the petition denying the allegations of the unverified petition.

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 11, 2023, IN DEPARTMENT NINE.

9. NAME CHANGE OF BIERMAN 23CV0729

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 12, 2023.

Proof of publication was filed on July 18, 2023, as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #9: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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10. BANK OF AMERICA v. MARTINEZ

22CV0948

**Request for Judicial Notice
Motion for Judgment on the Pleadings**

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the December 30, 2022, order of the court in this case to granting Plaintiff's Motion to Deem Plaintiff's Requests for Admissions Admitted.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Plaintiff's Motion for Judgment on the Pleadings

Plaintiff moves for judgment on the pleadings based on its Complaint, Defendant's Answer, and the Request for Admissions that was deemed admitted by this court by its Order of December 30, 2022, of which the court takes judicial notice. Both parties appeared at a hearing on the motion on May 26, 2023, and Defendant requested a continuance to seek counsel.

A plaintiff may move for judgment on the pleadings if the complaint states facts sufficient to constitute a cause of action against that defendant and the answer fails to state facts sufficient to constitute a defense to the complaint. Code Civil Procedure § 438 (c)(1)(A). The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, Burnett v. Chimney Sweep (2004) 123 Cal.App.4th 1057, 1064.

A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)

Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331.

However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.

Courts may consider judicially noticeable matters in the motion as well. Kapsimallis v. Allstate Ins. Co. (2002) 104 Cal.App.4th 667, 672; People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.

The Plaintiff's motion is unopposed. Although Defendant's Answer, filed on August 19, 2022, raises affirmative defenses, Defendant did not respond to Plaintiff's Request for Admissions, and the court granted Plaintiff's motion to deem those matters admitted on December 30, 2022. Those Requests for Admissions established that Defendant opened a bank account with Plaintiff; received documentation of the terms and conditions associated with the account; that Defendant made purchases and failed to make payments as they became due; that the last payment on the account was made on March 7, 2020 with an outstanding balance of \$3,338.39 remaining on the account; that Defendant received billing statements for payments due and did not object to any amount reflected on those billing statements; that the terms and conditions on the account included payment of court costs; and that Defendant has no defense to this action.

Plaintiff's motion is accompanied by a Declaration regarding Plaintiff's good faith attempts to meet and confer, as required by Code of Civil Procedure § 439(a).

Defendant has not filed any opposition to this motion. Given the facts deemed admitted, including that Defendant has no defense to this action, the Defendant cannot present any facts sufficient to constitute a defense to the Complaint.

**TENTATIVE RULING #10: PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED.**

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

Demurrer

Plaintiff filed an action for various Fair Employment and Housing Act (“FEHA”) violations and wrongful termination of her employment by two Defendants, Robinson Enterprises, Inc. (“Robinson Enterprises”) and Blu Sky Window Cleaning, Inc. (“Blu Sky”). The Complaint alleges that both entities shared common management and a common business purpose, that their operations and accounting practices were intermingled, that employees retained by one entity were commonly assigned tasks for the other entity, and that the two entities were operated as a single enterprise notwithstanding their separate corporate identities. Complaint at ¶4. As such, the Complaint alleges that the two Defendants acted as agents of each other and are jointly and severally liable for the violations listed in the Complaint.

Defendant Robinson Enterprises has filed a demurrer to the Complaint, arguing that the Plaintiff has failed to plead the existence of an employment relationship with Robinson Enterprises, which is foundational to all of the employment-related causes of action.

The Complaint alleges that Robinson Enterprises “conducted business in El Dorado County as GEORGETOWN GAS ‘N’ GO . . . where Plaintiff worked.” Complaint at ¶2. While Defendant argues that this allegation is incorrect, the Complaint also states that in the course of her employment, she “created and paid off invoices for Defendant Robinson Enterprises” Complaint at ¶12, and that Robinson Enterprises was owned by the same individual who served as President of Blu Sky. Complaint at ¶¶2-3. These allegations address a relationship between Plaintiff and Robinson Enterprises, and do not depend on an ownership interest by Robinson Enterprises in the Georgetown Gas ‘N’ Go. Further, in the context of a demurrer, the court is not free to consider extrinsic evidence beyond the pages of the Complaint or matters that are proper subjects of judicial notice. Exec. Landscape Corp. v. San Vicente Country Villas IV Assn., 145 Cal. App. 3d 496, 499 (1983).

The Complaint, Paragraph 5 further alleges that:

Plaintiff is informed and believe [sic] and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly situated individuals, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believe and thereon allege that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

Defendant Robinson Enterprises’ basis for its demurrer, simply stated, is that it does not own, operate or do business as Georgetown Gas ‘N’ Go, and so, even if Plaintiff was employed

by Georgetown Gas 'N' Go, Robinson Enterprises is not a proper Defendant for any employment-related cause of action. The fact that Plaintiff paid Robinson Enterprises "created and paid off invoices in the course of her employment," Defendant argues, is not sufficient to create any inference that she was employed by Robinson Enterprises.

Standard of Review

A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra*, 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra*, 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp., supra*, 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

Cantu v. Resol. Tr. Corp., 4 Cal. App. 4th 857 (1992), cited by Defendant, holds that to maintain an action in the face of a demurrer the Plaintiff must "show that he pleaded facts sufficient to establish *every element of [a] cause of action.*" Id. at 879, emphasis in original. In this case the element that has been contested is the employment relationship between Plaintiff and Robinson Enterprises.

An employment relationship, Defendant argues, is not sufficiently pleaded based on the allegation of a work assignment to create and pay invoices on behalf of the purported employer. Instead, the principal inquiry is whether the defendant controls the plaintiff's performance of employment duties, citing Vernon v. State of California, 116 Cal. App. 4th 114, 124 (2004). In that case, a municipal firefighter attempted to enforce the requirements of the FEHA against the State of California, and the court sustained the State's demurrer because there was no employment relationship between a municipal worker and a State agency, not even on a theory that such employment relationship was joint and several with the municipality, or indirectly through State regulation of local working conditions. The court elaborated at length on the variety of factors relevant to the determination of the existence of an employment relationship, concluding that the final analysis depended on a "totality of the circumstances", depending on a "myriad of facts", and that the precise contours of an employment relationship "can only be established by a careful factual inquiry." Id. at 125, citations omitted. "Generally, ... the individual factors cannot be applied mechanically as

separate tests; they are intertwined and their weight depends often on particular combinations.” [Citation.]’ (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351, 256 Cal.Rptr. 543, 769 P.2d 399, fn. omitted.)” Id.

Defendant argues that conclusions of law in the Complaint are not sufficient, such as Plaintiff’s statement that she was an employee of Defendant. Complaint at ¶1. While that is correct statement of the rule, Berry v. State of California, 2 Cal. App. 4th 688, 691 (1992), the Complaint also alleges facts leading to inferences that would support an employment relationship in paragraphs 5 and 12 of the Complaint. Whether the evidence supports those allegations will be determined at later stages of the action, but for the purpose of a demurrer the court must construe the Complaint liberally, deem facts alleged to be admitted and accept any reasonable inferences that may be drawn from those allegations.

The case of Scott v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 743, (2013) is not helpful to Defendant’s arguments because that case involved allegations of fraud, which must be pleaded with specificity, and judicially noticed documentation in that case established that the demurring defendant had no relationship to the transaction at issue. Defendant also cites Scott v. JPMorgan Chase Bank, N.A., 214 Cal. App. 4th 743 (2013) which did not find plaintiff’s “egregious example of generic boilerplate” convincing for the purpose of establishing joint and several liability among the defendants in that case. That case is similarly unhelpful, as the court did not rule on that issue; the cited passage only noted that the plaintiff would have another chance to make more specific allegations about actual knowledge sufficient to establish joint and several liability when the case was remanded.

TENTATIVE RULING #11: DEFENDANT’S DEMURRER IS OVERRULED.

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.