08-25-23
Dept. 9
Tentative Rulings

1. CALVARY SPV I, LLC v. SCOTT, ET AL PCL20120412

Motion to Renew Judgment *Nunc Pro Tunc*

This action was filed on May 29, 2012, and judgment was entered for Plaintiff on November 13, 2012 in the amount of $12,674.01. By operating of law, the judgment expired on November 13, 2022. Declaration of Rachel Haney, dated May 31, 2023 ("Haney Declaration") at ¶¶2-4.

On November 7, 2022, Plaintiff sent an Application for Renewal of Judgment and Memorandum of Costs to the court, which was rejected because the listed amount of the judgment on the Application for Renewal was incorrect. Plaintiff's counsel received the court's Notice of Rejection on December 13, 2022, after the expiration of the ten-year deadline for renewal set forth in Code of Civil Procedure §§ 683.020, 683.110. Haney Declaration at ¶¶5-6.

The court's November 20, 2022, Notice of Rejection indicated that the amount listed on the Judicial Council Form EJ-190 (Application for Renewal of Judgment), $12,229.01 was incorrect. The Clerk instructed Plaintiff to re-submit a corrected Application. Haney Declaration, Exhibit A.

The Plaintiff requests the court to take judicial notice of the court's file in the case, which request is granted pursuant to Evidence Code §§ 452(d), 453.

The Plaintiff requests the court to grant its Application for Renewal of Judgment on the following grounds:

1. The amount listed on the November 7, 2022, Application was a typographical error: $12,229.01 should have been listed as $12,299.01.
2. The date that the original Application was submitted within the ten-year deadline as evidenced in the court records, as the Clerk's November 10, 2022, demonstrates that the Plaintiff had submitted a timely Application. Plaintiff cites Rojas v. Cutsforth (1998) 67 Cal.App.4th 774, 778 to support the argument that the pleading may be deemed to be filed on the date when it is presented for filing at the Clerk's office. *See also*, United Farm Workers of America v. Agricultural Labor Relations Bd. (1985) 37 Cal.3d 912, 918; Carlson v. Dept. of Fish & Game (1998) 68 Cal.App.4th 774.
3. The Plaintiff did not have an opportunity to correct the minor error because it did not receive the Clerk's Notice of Rejection until after the statutory deadline for renewal had passed.

Plaintiff cites Rojas v. Cutsforth (1998) 67 Cal.App.4th 774, 778 to support the argument that the pleading may be deemed to be filed on the date when it is presented for filing at the Clerk's office, and that minor errors compounded by failures of communication beyond the control of the party filing a pleading should not result in adverse application of a statute of limitations. *See also*, United Farm Workers of America v. Agricultural Labor Relations Bd. (1985) 37 Cal.3d 912, 918; Carlson v. Dept. of Fish & Game (1998) 68 Cal.App.4th 774.

Plaintiff cites the court's authority to enter a *nunc pro tunc* Order to preserve the rights of the litigants as justice may require in light of the circumstances of a particular case. Young v. Gardner-Denver Co. (1966) 244 Cal.App.2d 915, 916; Martin v. Martin (1970) 2 Cal.3d 752, 760-761.

> The general rule is that "courts have inherent power to enter judgments *nunc pro tunc* so as to relate back to the time when they should have been entered, but will do so only to avoid injustice." (*Phillips v. Phillips,* 41 Cal.2d 869, 875 [264 P.2d 926].) (3) A *nunc pro tunc* judgment is allowed for the purpose of preserving the rights of litigants (*Hess v. Gross,* 56 Cal.App.2d 529, 532 [133 P.2d 1]) and is to be granted or refused as justice may require in view of the circumstances of a particular case. (*Norton v. City of Pomona,* 5 Cal.2d 54, 62 [53 P.2d 952].) (4) It has been said that the only grounds for antedating a judgment are for "... the preservation of the legitimate fruits of the litigation which would otherwise be lost to the prevailing party or the correction of a deficiency in the recordation of a previous decision so as to express the true intention of the court as of the earlier date and thus conform to verity." (*Mather v. Mather,* 22 Cal.2d 713, 719 [140 P.2d 808].)

Young v. Gardner-Denver Co., 244 Cal. App. 2d 915, 919, 53 Cal. Rptr. 522 (Ct. App. 1966)

Accordingly, the Plaintiff requests the court to enter a Renewal of Judgment *nunc pro tunc* to November 10, 2022, with a principal amount of $12,299.01, remaining unpaid interest in the amount of $11,165.76, and a renewal motion fee of $60.00, for a total renewed judgment amount of $23,524.77.

TENTATIVE RULING # 1: ABSENT OBJECTION, THE MOTION 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.

2. HIDDEN SPRINGS VILLA LP v. ESTATE OF DANIELLE BUDA 23CV0117

Petition for Declaration of Abandonment

This Petition relies upon Civil Code § 798.61 regarding the procedures for declaring a mobile home abandoned and for the recovery of unpaid rents.

On March 31, 2014, Danielle Buda entered into a rental agreement with Petitioner, a mobile home park, for the rent of the mobile home at issue in this Petition. Petition, Exhibit 2. In April, 2022, Buda did not pay rent when it came due. Petitioner sent Buda a notice to sell or remove the mobile home on April 13, 2022, as required by Civil Code § 798.55(b), (see Petition, Exhibit 3) whereupon Petitioner learned of Buda's death and the appointment of the Public Administrator to manage her estate. Petition, Exhibit 5. The Public Administrator notified Petitioner that it was abandoning the mobile home and that the estate was insolvent.

Currently the amount of past due rent and utilities is $7,484.97.

On June 27, 2022 Petitioner issued a 30 day Notice of Belief of Abandonment pursuant to Civil Code § 798.61(b). Petition, Exhibit 4.

On January 26, 2023, Petitioner filed this Petition pursuant to Civil Code § 798.61(c). The statute requires copies of the Petition to be served on the homeowner/registered owner, and upon any known person having a lien or security interest of record, which in this case would be the Public Administrator. There is no proof of service of the Petition on the Public Administrator; however, the August 25, 2022 letter from the Public Administrator to Petitioner declares that "the Public Administrator abandons this property" to Petitioner "to sell or otherwise use to offset the debt owned by Danielle Buda to the Park." Petition, Exhibit 5. The Public Administrator also requested arrangements to visit the property to collect any "essential papers and family items" that are part of the estate. Id.

In order to dispose of an abandoned mobile home, the Civil Code § 798.61(c)(2) lists the following requirements, language that is not currently included in the Petition as filed:

(A) Declare in the petition that the management will dispose of the abandoned mobilehome, and therefore will not seek a tax clearance certificate as set forth in Section 5832 of the Revenue and Taxation Code.
(B) Declare in the petition whether the management intends to sell the contents of the abandoned mobilehome before its disposal.[1]

[1] Although correspondence from the Public Administrator indicated its intention to remove essential documents and family items from the home, there is no indication in the Petition regarding the remaining contents. Within ten days of a judicial determination of abandonment, Section 798.61(f)(1)(A) requires the management of the mobile home park too complete an inventory of the contents of the mobile home and file that inventory with the court.

(D) Declare in the petition that management intends to file a notice of disposal with the Department of Housing and Community Development and complete the disposal process consistent with the requirements of subdivision (f).

Once these requirements regarding the contents of the Petition are met, Section 798.61(d) provides direction with respect to the court hearing:

> (2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing and tenders all past due rent and other charges, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney's fees and costs to the petitioner. For purposes of this subdivision, an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.
>
> (3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

Within 10 days following a judgment of abandonment, Section 798.61(e)(1)(B) requires Petitioner to post and mail a notice of intent to dispose of the abandoned mobile home and its contents, and announcing the date of disposal, in the same manner as provided for the notice of determination of abandonment under Section 798.61(b), as well as to the county tax collector. Section 798.61(f)(1)(C) also requires such notice be provided to the Department of Housing and Community Development within 30 days of the judgment of abandonment.

Within 30 days following the sale of the mobile home and any personal property contained within it, Petitioner is required to file with the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory, and a statement that the mobile home was disposed of, with supporting documentation. Civil Code §§ 798.61(e)(3); 798.61(f)(3)(A)(i); 798(f)(3)(B).

Although it is clear that the Public Administrator expressly informed Petitioner in writing that it was abandoning the mobile home, there are presumably family members who have an interest in the estate, and who may be entitled to surplus proceeds, if any, from the sale. These parties also have rights under the statute to reclaim the property at any time prior to the sale:

> At any time prior to the sale of an abandoned mobilehome or its contents under this section, any person having a right to possession of the abandoned mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court.

Civil Code § 798.61 (e)(1)(C).

Accordingly, in addition to the elements listed in Civil Code § 798.61(c)(2)(A)-(D) that are required to be included in the Petition, the requirements for proof of service must be met prior to a judicial declaration of abandonment.

TENTATIVE RULING #2: THIS MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, OCTOBER 27, 2023, IN DEPARTMENT NINE, TO ALLOW PETITIONER AN OPPORTUNITY TO RE-FILE THE PETITION IN COMPLIANCE WITH ALL REQUIREMENTS OF CIVIL CODE SECTION 798.61(c)(2), AND TO SERVE NOTICE OF THE PETITION IN COMPLIANCE WITH CIVIL CODE SECTION 798.61(c).

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

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3. BOWMAN v. GOLD COUNTRY HOMEOWNERS PC20200539

(1) Motion to Quash Subpoena for Records
(2) Motion to Compel Answers to Interrogatories

This case alleges malicious prosecution and civil conspiracy, and was filed on October 21, 2020 by Jeff and Carrie Bowman ("Plaintiffs") against the Gold Country Homeowners Association ("HOA") and five individuals who were members of the board of directors of at the time that the HOA brought a lawsuit against the Bowmans and lost. (El Dorado County Superior Court Case No. PC20170366)

Request for Judicial Notice

As part of their Opposition to Defendant's Motions to Quash Subpoenas for Records of Crystal Center and Russell Townsend, Plaintiffs request that the court take judicial notice of the following documents:

A. April 12, 2019, Statement of Decision, Gold Country Homeowners Association v. Jeff Bowman (PC20170366)
B. April 12, 2019, Judgment in Case No. PC20170366
C. Complaint for Malicious Prosecution and Civil Conspiracy, filed October 21, 2020, in this case (PC20200539)
D. May 5, 2021, Minute Order denying Anti-SLAPP motion in this case (PC20200539)
E. Answer to Complaint filed by D. Ott, R. Benton, B. Erb, D. Erb. And R. Vannucci in this case (PC20200539)
F. First Amended Answer of Defendant Gold Country Homeowners' Association to Plaintiff's Complaint for Malicious Prosecution and Civil Conspiracy, filed July 28, 2022, in this case (PC20200539)
G. Stipulation and Protective Order filed July 29, 2022, in this case (PC20200539)

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, Plaintiffs' request for judicial notice is granted.

Motion to Quash

The five individual defendants in this case ("Moving Defendants"), not including the HOA, have filed this motion to quash Plaintiffs' subpoena for records in the possession of two

attorneys, Crystal Center and Russell Townsend, who represented the HOA during the time leading up to and during its litigation against the Bowmans.

The challenged subpoenas address communications and documents exchanged between Defendants and two attorneys who represented the HOA at various stages in the prior litigation, Crystal Center and Russell Townsend.

Proceedings before this court in 2022 that involved similar discovery issues led the parties to address attorney-client privilege through the amendment to the HOA's Answer that added a "reliance on counsel" affirmative defense, thus allowing Plaintiffs' access to the HOA's attorney-client communications, and the execution of a Stipulation and Protective Order dated July 29, 2022 ("Stipulation") to limit that access to the narrow scope of this litigation.

The materials requested in the subpoenas at issue had largely already been requested from, and documents were produced by, the Moving Defendants that were not challenged as being outside the scope of the Stipulation.

According to the pleadings filed in relation to these motions, the differences between the discovery requests with which Moving Defendants have already responded and the ones they seek to quash are 1) they are directed to third party attorneys, and 2) they are not limited to a time period agreed upon in the Stipulation, (*i.e.* prior to the April 12, 2019 judgment in the underlying litigation), and 3) they are overbroad in that they seek categories such as "all documents" and "all communications" that are not limited to the issues presented in the malicious prosecution lawsuit. See Defendants' Notice of Motion and Motion to Quash Plaintiffs' Subpoena for Records of Crystal M. Center, Declaration of Kenneth O. Taylor, dated May 5, 2023, Exhibit C; Separate Statement of Issues in Dispute in Support of Defendants' Motion to Quash Plaintiffs' Subpoena for Records of Russell H. Townsend.

In response to this concern, Plaintiffs' counsel did agree to limit the inquiry with respect to attorney Crystal Center to the time before April 12, 2019, but has not agreed to limit the scope of the request as to Russell Townsend, because Mr. Townsend had continued to represent the HOA after the judgment in the prior litigation was entered.

<u>Reasonable Likelihood to Lead to Admissible Evidence</u>

"[A]ny 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." Code of Civil Procedure § 2017.010.

Defendants argue that the subpoenas should be quashed because they are not reasonably calculated to lead to admissible evidence.

Plaintiffs' respond that the subpoenas, including communications with Mr. Townsend after the April 12, 2019 judgment, are sufficiently related to the malicious prosecution action and the Moving Defendants' "reliance on counsel" affirmative defense.

> There are four essential elements to a malicious prosecution claim. First, there had to have been a prior action "commenced by or at the direction of the defendant [that] was pursued to a legal termination in ... [the] plaintiff's[ ] favor.". . . Second, the defendant must have brought the prior action without probable cause. Third, the defendant must have initiated the prior action with malice. . . . Fourth, the plaintiff must show resulting damage, which may include out-of-pocket losses of attorney fees and costs, as well as emotional distress and injury to reputation.

Maleti v. Wickers, 82 Cal. App. 5th 181, 203, (2022) (citations and footnote omitted).

Central to Defendants' assertion of a "reliance on counsel" affirmative defense are the communications between the Defendant and counsel to establish whether "the defendant made a full and fair statement of the material facts of the case to the attorney, and that the defendant thereafter instituted and maintained the prior action in good faith reliance on the advice given." Bisno v. Douglas Emmett Realty Fund 1988, 174 Cal. App. 4th 1534, 1544 (2009), citing Bertero v. National General Corp. (1974) 13 Cal.3d 43, 53–54; 26 Am. Jur. Proof of Facts 2d 275 (footnotes omitted).

Accordingly, the communications between the Defendants and their attorneys before and leading up to the judgment in the underlying litigation, including the exchange of documents, are relevant to the Defendants' knowledge and intentions and the extent of their factual disclosures to the attorneys in conceiving, preparing and participating in the lawsuit.

Any objection that the scope of the subpoenas is outside the bounds allowed by Code of Civil Procedure § 2017.010 is overruled.

Burdensomeness

Defendants argue that the subpoenas should be quashed because they are unduly burdensome, citing Calcor Space Facility, Inc. v. Sup. Ct., 53 Cal.App.4th 216 (1997).

"The objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought." W. Pico Furniture Co. of Los Angeles v. Superior Ct. In & For Los Angeles Cnty., 56 Cal. 2d 407, 417 (1961). The court is not able to consider the validity of a claim that a request is burdensome without any information that allows the court to balance the purpose and need for the information by the propounding party against the burden that is claimed by the responding party. Deyo v. Kilbourne, 84 Cal. App. 3d 771, 788–89

(1978); Coriell v. Superior Court, 39 Cal.App.3d 487, 492-493 (1974); Columbia Broad. Sys., Inc. v. Superior Court, 263 Cal.App.2d 12, 19 (1968).

Defendant cites the case of Calcor Space Facility v. Superior Court, 53 Cal.App.4th 216 (1997) to support its arguments. However, that case involved the subpoena of documents from a non-party consisting of a twelve-page demand with 32 requests and six pages of definitions that amounted to a demand for everything in the non-party's possession where "the justifications offered for the production [were] mere generalities." Id. at 224. Unlike Moving Defendants in this case, the responding party in that case specified that "would take two people a minimum of two and one-half to three weeks of full-time effort" to "review the correspondence and general files of all of its departments" in several locations.

In this case, if Plaintiffs' request represents an undue burden on Defendants, Defendants have yet to specify any quantum of labor or expense that would be involved on which the court could base such a finding. In particular, the Moving Defendants have not established that a document production by a third party creates a burden on the Defendants. Accordingly, any objections based on unspecified burden on the Defendant are overruled.

Attorney-Client Privilege

Defendants further argue that the subpoenas should be quashed because they seek confidential attorney-client information and attorney work product.

The Moving Defendants filed an Answer to the malicious prosecution Complaint on October 21, 2021 (Plaintiff's Request for Judicial Notice, Exhibit E) in which they asserted, in their Ninth Affirmative Defense, that they had reasonable grounds for bringing and continuing the underlying lawsuit because they were relying on the advice of an attorney, and "reasonably relied on the attorney's advice." As discussed above, in the context Moving Defendants' assertion of a "reliance of counsel" defense the Moving Defendants' communications and document exchanges with their attorneys in the context of the lawsuit against the Bowmans is squarely at issue, amounting to an "implied waiver" of the privilege. Transamerica Title Ins. Co. v. Superior Ct., 188 Cal. App. 3d 1047, 1052 (1987).

In this case, the implied waiver was reduced to an express, written waiver following a discovery dispute involving substantially similar issues in the instant case in which the court offered the parties an opportunity to both assert a "reliance of counsel" defense while at the same time crafting adequate protections for confidential material, in the form of the July 29, 2022 Stipulation that was negotiated and executed by the parties and approved by this court. It is the terms of the Stipulation that should govern this dispute.

Scope of Stipulation and Protective Order

Defendants argue that the subpoenas should be quashed because they violate the terms of the Stipulation and Protective Order.[2]

In the Stipulation, all Defendants agreed to "waive the right to withhold Confidential Materials under the terms set forth in this stipulation and Protective Order and the terms set forth in Gold County HOA's limited scope waiver of the attorney client privilege effectuated on March 22, 2022, which provided as follows:

a. Minda Bila motioned to authorize a limited scope waiver of the attorney-client privilege between Gold Country HOA and Ms. Crystal Center, and the Gold Country HOA and Mr. Russell Townsend, up to the date of judgment entered April 12, 2019, subject to a protective order as to any records, communications and testimony in the malicious prosecution action initiated by Jeffrey Bowman and Carrie Bowman only, . . . This waiver is contingent upon the [HOA] being able to assert the "Reliance on Counsel" affirmative defense in an amended Answer in the Malicious Prosecution action. . . .

As to the question of whether discovery of privileged matters could be sought from non-parties, the Stipulation expressly anticipated that possibility in Paragraph 13, which allows a non-party witness in discovery to designate information as "confidential" and protected by the terms of the Stipulation.

As to the Moving Defendants' objections that the subpoena categories are not time limited, the court finds that the Stipulation clearly provides for discovery of information up to the date of the April 12, 2019 judgment, and expressly includes materials associated with attorney Russell Townsend within that date range. The document requests are accordingly limited to that end date per the parties' express agreement in the Stipulation.

As to Defendants' objection based on overbreadth, given the inherent parameters based on the subject matter, *e.g.* the Bowmans, who acquired the property in 2016, the MOU, which was executed in 2002, and the "Prior Litigation" referencing the 2017 case, the court finds that Categories 1, 2 7, 11 and 12 are not overbroad.

Categories 3, 4, 5, 6, 8, 9, and 10 do not contain any inherent boundaries on the information requested by date or by subject matter (*e.g.* "All Communications with any members of the [HOA], and any person acting for the member(s), including but not limited to all Documents Relating to the Communications") are overbroad. The court limits Categories 3,

[2] Moving Defendants' Reply to Plaintiffs' Opposition raises the Parol Evidence Rule to object to Plaintiffs' interpretations of the scope of the parties' Stipulation. However, the court need not go beyond the clear language of the Stipulation to interpret the scope of the attorney-client privilege waiver that was agreed to by the parties.

4, 5, 6, 8, 9, and 10 to information related to the Bowmans, the MOU or the Prior Litigation, as defined, up to the date of April 19, 2019.

Motion to Compel Further Responses to Interrogatories

On June 28, 2022, Plaintiffs propounded certain Form Interrogatories and Requests for Admissions, and filed this motion to compel further responses to those that were provided by Defendants on August 18, 2022.

Plaintiffs' counsel sent 'meet and confer' correspondence on November 2, 2022, and the parties negotiated an extension that extended through April, 2023, setting a new deadline for responses on May 5, 2023. On May 4, 2023, in a telephone conversation between counsel for the litigants, Defendant's counsel agreed to provide supplemental responses. However, the parties disagree on the substance of that telephone conversation, and Plaintiffs filed this motion on May 5, 2023. On August 10-11, 2023, Defendants provided supplemental responses that apparently partially address the issues in dispute. *See* Declaration of Douglas Roeca, dated August 18, 2023; Declaration of Kenneth Taylor, dated August 14, 2023.

Plaintiffs argue that Defendants' responses, which were produced less than ten court days before the hearing that was noticed six weeks prior, are still not sufficient.

Code of Civil Procedure § 2016.040 requires a declaration to be filed in support of the motion that shows a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion." While it is the moving party's obligation to provide this declaration, the non-moving party is under no lesser obligation to meet and confer is good faith. "Failing to confer in person, by telephone or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery" is sanctionable misuse of the discovery process by either party. Code of Civil Procedure §§ 2023.010(i); 2023.020. In this case, seven months passed between the Plaintiffs' meet and confer letter in November, 2022 and any subsequent, substantive communication between the parties, which consisted of a single telephone call one day before the negotiated deadline for filing this motion. Supplemental responses were finally forthcoming from the Defendants one week before the deadline for the Plaintiffs to file a reply in time for the court's hearing of the matter.

A Separate Statement is required by California Rules of Court § 3.1345(c) to accompany this motion:

> A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response.

Due to the timing of Defendants' response to the discovery request in relation to the hearing on the issue, the Separate Statement that is on file with the court for this motion is now non-compliant.

The motion is continued to allow the parties to comply with the statutory meet and confer requirements in a manner that demonstrates a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion," and for Plaintiff to file an amended Separate Statement reflecting the current state of any remaining dispute as required by the California Rules of Court.

The court will reserve the issue of sanctions and will make a determination on that issue depending on both parties' demonstrated compliance with discovery rules, including genuine and substantive meet and confer efforts, at the time of the continued hearing.

TENTATIVE RULING # 3:

(1) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) DEFENDANTS' MOTIONS TO QUASH THE SUBPOENA WITH RESPECT TO RECORDS OF CRYSTAL CENTER AND ROBERT TOWNSEND ARE OVERRULED. THE COURT DIRECTS COMPLAINCE WITH THE SUBPOENA PURSUANT TO CODE OF CIVIL PROCEDURE 1987.1 WITH THE MODIFICATION LIMITING CATEGORIES 3, 4, 5, 6, 8, 9, AND 10 TO INFORMATION RELATED TO THE BOWMANS OR THE MOU, AS DEFINED IN THE JULY 29, 2022 STIPULATION AND PROTECTIVE ORDER, OR TO THE PRIOR LITIGATION AS DEFINED IN THE DEPOSITION SUBPOENA FOR PRODUCTION OF DOCUMENTS, UP TO THE DATE OF APRIL 19, 2019.

(3) THE PLAINTFFS' MOTION TO COMPEL AND REQUEST FOR SANCTIONS IS CONTINUED TO 8:31 A.M. ON 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).

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4. NAME CHANGE OF LIA VANCLEAVE 23CV1016

Petition for Name Change

Petitioner filed a Petition for Change of Name on June 26, 2023.

Proof of publication was filed on August 4, 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 4: 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.

5. NAME CHANGE OF SCHUETTE 23CV0669

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 3, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication and a background check with the court.

TENTATIVE RULING #5: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 27, 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).

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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 HATT 23CV1079

Petition for Name Change

Petitioner filed a Petition for Change of Name on July 5, 2023.

There is nothing in the court's records indicating that the Order to Show Cause ("OSC") has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication and a background check with the court.

TENTATIVE RULING #6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 27, 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).

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7. NAME CHANGE OF JERIN VANCLEAVE 23CV1015

Petition for Name Change

Petitioner filed a Petition for Change of Name on June 26, 2023.

Proof of publication was filed on August 4, 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 #7: 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).

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8. NAME CHANGE OF WEN YI 23CV1048

Petition for Name Change

Petitioner filed a Petition for Change of Name on June 30, 2023.

Proof of publication was filed on August 4, 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 #8: 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).

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9. BHULLAR v. AKINS & AKINS PROPERTIES, LLC 23UD0125

Demurrer

Defendant has filed a demurrer to the Complaint pursuant to Code of Civil Procedure § 430.10(e), arguing that the Complaint does not state facts sufficient to constitute a cause of action.

Plaintiff filed this Complaint for unlawful detainer on March 27, 2023.

Defendant's demurrer alleges:

1. The 10 Day Notice to Pay Rent or Quit and the 10 Day Notice to Perform Covenants or Quit lack a suite number, unit number or business name as part of the address as to where payment must be made, rendering the Notices vague, and ambiguous, especially since multiple business operate at the address specified in the Notice.
2. Plaintiff has labelled Exhibit 3 to the Complaint as a proof of service, but no proof of service is attached.
3. The Complaint dos does not identify the name of the business to which the Notice was served or the name or description of the person in charge of the business.

"A cause of action for unlawful detainer is a summary proceeding designed to provide an expeditious remedy to recover possession of real property. . . . Due to the summary nature of the proceeding, strict compliance with the statutory requirements is a prerequisite to a landlord's recovery of possession." Frazier v. Superior Ct. of Los Angeles Cnty., 86 Cal. App. 5th Supp. 1, 302 Cal. Rptr. 3d 646, 650 (2022).

Code of Civil Procedure § 1161(2) provides comprehensive instructions on the prerequisites for maintaining an unlawful detainer action:

> A tenant of real property, for a term less than life, or the executor or administrator of the tenant's estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:
>
> * * *
>
> 2. When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment, stating the amount that is due, *the*

> *name, telephone number, and address of the person to whom the rent payment shall be made,* and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

(Emphasis added.)

In this case, Defendant is correct that Plaintiff failed to follow the instructions on the Judicial Council Complaint form which instructed Plaintiff to label attached documentation as Exhibits 1-3. The Complaint also mis-spelled the Defendant's business name on the Complaint and Plaintiff's counsel had to file an amendment of the name in its pleadings to correct the mistake, which in turn required the Clerk to re-send a Notice of Restricted Access to the correct party. Although a certain lack of care is evident in the preparation of the Complaint, that in itself is not the basis on which the court finds grounds to sustain Defendant's demurrer.

Rather, the court finds that the demurrer should be sustained because the unlawful detainer statutes very clearly specify that the manner of making payment must be set out in the "pay or quit" notice served on the Defendant, which is not adequately specified in the notices filed by the Plaintiff. Under Section 9(b) of the June, 2018 Assignment and Amendment of the Sublease, rent payments are to be made to the landlord at an address in North Highlands, the "address set forth in the introductory paragraph of this Assignment and Amendment of Sublease." But the "pay or quit" notice lists the same address for payment as the address of the property that Defendant occupies. Without more specificity, the court finds the address provided to be insufficient for the purpose of the written notices required by the unlawful detainer statutes.

TENTATIVE RULING #9: DEFENDANT'S DEMURRER IS SUSTAINED WITH LEAVE TO AMEND WITHIN 30 DAYS.

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

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