1. FERRER v. NISSAN NORTH AMERICA, INC. 22CV1636

Motion to Compel

The Complaint was filed on November 17, 2022, alleging (1) violations of Civil Code § 1793.2(d); (2) violations of Civil Code § 1793.2(b); (3) violations of Civil Code § 1793.2(a)(3); (4) breach of implied warranty of merchantability (Civil Code §§ 1791.1, 1794, 1795.5) and (5) fraudulent inducement/concealment. In essence, this action is brought under the Song-Beverly Consumer Warranty Act (Song-Beverly Act), for defects in a 2021 Nissan Rogue vehicle. At issue are twelve Requests for Production ("RFP"), numbers 1, 8, 15, 17, 30, 36, 57, 59, 73, 76, 78 and 79 (the "Contested Requests").

The case is in the discovery stage. On May 23, 2023, Plaintiff filed a Motion to Compel Further Responses and Documents to Plaintiff's Request for Production of Documents, Set One. Defendant responded on March 20, 2023.

Meet and Confer Efforts

On January 26, 2023, Plaintiffs sent Defendant a letter inviting Defendant to meet and confer about the production of Electronically Stored Information ("ESI"). The letter referenced Defendant's obligations pursuant to California Rules of Court, Rule 3.724.

There is no evidence in the court's record that the Defendant responded to this meet and confer request on the subject of ESI. *See,* Declaration of Rabiya Tirmizi, dated May 23, 2023 ("Tirmizi Declaration") at ¶16; Declaration of Olivia Avelino, dated July 21, 2023 ("Avelino Declaration") at ¶5; Declaration of Nicholas Maugeri, dated July 13, 2023 ("Maugeri Declaration") at ¶5.

On May 9, 2023, Plaintiffs sent Defendant a letter detailing its position that the responses to the referenced Requests were inadequate, including a statement that Defendant had not responded to Plaintiffs' January 26, 2023, letter regarding the need to meet and confer with respect to ESI to exchange information about ESI custodians, databases and search terms.

On May 15, 2023, Defendant responded in writing in a letter which did not exert itself beyond denying the Plaintiffs' assertions and returning a signed protective order with the statement: "Once the Protective Order is in place, Nissan will produce its internal policies and procedures regarding consumer vehicle complaints arising under the Song-Beverly Act."

Over the course of seven months since the discovery was served and the four months since the Motion to Compel was filed, Defendant's five-page letter is the extent of Defendant's effort to narrow the issues or to supplement its March 20, 2023, responses in this discovery effort. And yet, Defendant argues that "had Plaintiff *substantively* engaged in the meet-and-

confer process in good faith-as Code of Civil Procedure § 2023.010 requires, Nissan would have gained the clarity and specificity needed to negotiate a reasonable compromise to respond to Plaintiffs remaining requests."

Because the pleadings on this motion filed by each party accused the other of failing to meet and confer, in the hearing set for July 28, 2023, the court continued this matter to allow the parties an opportunity to meet and confer in good faith, and offered to host an informal discovery conference for that purpose. The parties have made no further meet and confer efforts in the six weeks since that Tentative Ruling was published.

Requests for Production of Documents

"A party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:" (1) a statement that the party will comply, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Code of Civil Procedure §2031.210. Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection…including one based on privilege or on the protection of work product…" Code of Civil Procedure § 2031.300(a).

A statement that the party will comply shall include a statement "that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." Code of Civil Procedure § 2031.220.

A statement of inability to comply shall "affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Code of Civil Procedure § 2031.230.

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Code of Civil Procedure § 2031.240.

In order to address the large number of issues that the parties' anemic meet and confer efforts have left for the court to resolve, the court will first address general categories of objections raised by Defendant, and then will address any remaining issues with respect to

specific requests to the extent that the parties' positions are discernable from the meandering exchange of tangential boilerplate that constitutes the parties' Separate Statements filed with respect to this motion.

Relevance

"Unless otherwise limited by order of the court in accordance with [the discovery statutes], any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Gonzalez v. Superior Ct., 33 Cal. App. 4th 1539, 1546 (1995). The question is not whether information requested is admissible, the question is whether the information sought might lead to the discovery of admissible evidence. Cal. Code Civ. Pro. § 2017.010. "Doubts as to relevance should be resolved in favor of permitting discovery." Colonial Life & Accident Ins. Co. v. Superior Ct., 31 Cal. 3d 785, 790 (1982).

In response to several of the outstanding Requests for Production Defendant asserts that the discovery requests are not tailored to Plaintiffs' case because they involve vehicles other than the Plaintiffs' vehicle. Defendant states that this case is a "is not a class action. It is a standard lemon law matter in which Plaintiffs seek replacement of a single vehicle and civil penalties," and that therefore, Plaintiffs should not be allowed to inquire into facts relating to other vehicles. This is not an accurate argument.

Plaintiffs' Complaint is based upon provisions of the Civil Code specific to consumer purchases of vehicles. Those California Civil Code sections, collectively referenced as the Song-Beverly Consumer Warranty Act, contain elements of knowledge and willfulness. Accordingly, evidence of a defendant's prior knowledge of a problem with a particular vehicle model is relevant to whether a defendant engages with a plaintiff in good faith in deciding whether to attempt to repair a vehicle, or knowing that it cannot be repaired, agrees to repurchase it. To establish this knowledge, information about internal investigations and communications as well as histories of consumer complaints are all relevant inquiries.

For example, in the Song-Beverly Act case of Santana v. FCA US, LLC, 56 Cal. App. 5th 334 (2020), the defendant appealed the jury's imposition of a penalty for willfully failing to repurchase a plaintiff's vehicle because, it said, there was not substantial evidence to support the verdict. The appellate court disagreed, holding that "[b]y the time Chrysler's duty to repurchase arose, it was aware of the electrical defect in Santana's vehicle, which it chose not to repair adequately." Id. at 338. The evidence supporting that determination of liability for willful failure to comply with the Song-Beverly statute was associated with a "totally integrated power module" ("TIPM") that was installed in vehicles other than the plaintiff's vehicle beginning several years before the plaintiff's purchase. In years before and after the plaintiff

purchased his vehicle and during the period that the plaintiff sought multiple repairs for mechanical problems, the TIPM was subject to multiple recalls, multiple internal "Issue Detail Reports", discussion in internal emails, the development of informal work-arounds and internal investigations and reports. All of that information was admitted into evidence and directly supported the determination of liability.

Plaintiffs argue that Donlen v. Ford, 217 Cal.App.4th 138 (2013), and Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) establish the relevance of mechanical problems in vehicles other than the vehicle belonging to the Plaintiffs. Defendant counters that neither of these two cases are applicable to the relevance of evidence concerning other vehicles.

The case of Donlen v. Ford, 217 Cal.App.4th 138 (2013) was a Song-Beverly Act case involving a vehicle. The trial court granted of a new trial after a jury verdict in favor of the buyer because, among other things, it determined that the jury heard evidence regarding vehicles other than the plaintiff's vehicle that was prejudicial to the defendant. The grant of a new trial was appealed. The appellate court reversed the trial court's determination that a new trial was warranted. In that case a truck was repaired multiple times, and when it continued having mechanical problems plaintiff demanded that Ford repurchase the truck pursuant to the Song-Beverly Act. During trial, Ford sought to exclude evidence of mechanical problems in trucks other than the plaintiff's truck as being unduly prejudicial. The appellate court disagreed, noting that the testimony was limited to the specific part and the same model that malfunctioned in the plaintiff's vehicle and included Ford's communications to its dealers and technicians about problems with that particular part and that particular model. "Thus, everything about which [plaintiff's expert] testified that applied to other vehicles applied equally to plaintiff's vehicle. Such evidence certainly was probative and not unduly prejudicial." Id. at, 154.

Doppes v. Bentley Motors, Inc. 174 Cal.App.4th 967 (2009) was another Song-Beverly Act case in which the appellate court reversed the trial court's refusal to impose terminating sanctions upon the defendant for misuse of the discovery process for withholding documents and violating discovery orders. As a legal precedent this case does not address the relevancy of evidence of vehicles other than the plaintiff's vehicle. However, as a real-world example of a Song-Beverly Act case it demonstrates that discovery in such cases can include information about other similar problems experience by other vehicle owners, as well as searches of electronically stored information, including internal emails, repair histories of similar vehicles, correspondence related to customer complaints and related communications to dealers. The court found that the defendant's persistent failure to comply with discovery orders warranted "the extraordinary, yet justified, determination that the trial court abused its discretion by failing to impose terminating sanctions against defendant for misuse of the discovery process." Doppes v. Bentley Motors, Inc., 174 Cal. App. 4th 967, 971(2009).

The court finds that there is ample legal precedent to support reliance upon evidence related to vehicles other than the Plaintiff's vehicle in Song-Beverly Act cases.

Burdensomeness

"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 extent of Defendant's assertions about the burdensomeness of the Contested Requests is that "the cost and burden of producing them would be staggering. . . . Complying with these requests would require Nissan . . . to conduct extensive searches of internal customer records and collect every report of every Nissan vehicle with the same transmission as Plaintiff's vehicle, regardless of year or model." 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).

Calcor Space Facility v. Superior Court, 53 Cal.App.4th 216 (1997) 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 Defendant 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. Id. at 219.

Defendant has not supported its argument that any of the Contested Requests are burdensome with any specific information that can be the basis for a finding by the court. Accordingly, objections base on burdensomeness are overruled.

Defendant's Objections to Search of Electronically Stored Information ("ESI")

Defendant has raised objections to being required to produce emails or other ESI. As discussed elsewhere, Plaintiffs invited Defendant to meet and confer on this issue, for the purpose of identifying relevant databases, custodians and mutually agreeable search terms for the production of electronic information. Defendant never responded to this invitation. Defendant has not briefed the legal basis for its objections to producing ESI. In its Response to

Plaintiffs' Separate Statement, where it is called upon to produce emails or ESI the totality of Defendant's objection is as follows:

> Nissan objects to the production of ESI and/or electronic mail because it is unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and not proportional to the needs of this case.

These statements are not supported by any showing of burden or any analysis of relevance with respect to the particular response to which it is appended.

In the specific responses to Requests numbers 17, 36 and 76 Defendant adds: "Nissan cannot comply with the request for emails because Plaintiff's [Request is so broad that is impossible/"defect" definition is insufficient/"TRANSMISSION DEFECT(S) definition is insufficient] for Nissan to identify any potential custodians and contains words and phrases so common as to render the results of any such search terms meaningless."

This objection could have been cured if Defendant had complied with its obligation to meet and confer on this issue, an obligation that is set forth in California Rules of Court, Rule 3.724, as follows:

> "[T]he parties must meet and confer, in person or by telephone, to consider . . . the following:
>
> * * *
>
> "(**8)** Any issues relating to the discovery of electronically stored information, including: **(A)** Issues relating to the preservation of discoverable electronically stored information; **(B)** The form or forms in which information will be produced; **(C)** The time within which the information will be produced; **(D)** The scope of discovery of the information; **(E)** The method for asserting or preserving claims of privilege or attorney work product, including whether such claims may be asserted after production; **(F)** The method for asserting or preserving the confidentiality, privacy, trade secrets, or proprietary status of information relating to a party or person not a party to the civil proceedings; **(G)** How the cost of production of electronically stored information is to be allocated among the parties; **(H)** Any other issues relating to the discovery of electronically stored information, including developing a proposed plan relating to the discovery of the information; . . . ."

Code of Civil Procedure § 2031.210(d) provides:

> If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or court order, the responding party shall identify

> in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information.

As Defendant has disregarded its obligation to meet and confer regarding ESI issues and has failed to meet the requirements for preserving its objections to producing ESI, the court finds that Defendant has waived any such objections.

Defendant's Request-Specific Objections

Defendant objects to the definition of "NISSAN VEHICLES" ("all vehicles manufactured and/or sold by Nissan North America, Inc., that are equipped with the CVT Transmission like the SUBJECT VEHICLE") as vague, ambiguous, burdensome, oppressive and irrelevant.

Ruling: Overruled. The definition is not vague or ambiguous because it limits the inquiry to a distinct class of vehicles that have a "continuously variable transmission" that is the same as that included with the Plaintiffs' vehicle. Problems experienced in other vehicles with the same type of transmission is potentially relevant in this Song-Beverly Act context to the problems Plaintiffs experienced with their vehicle.

Defendant objects to the definition of "YOU, YOUR" ("Defendant Nissan North AMERICA, Inc.; and any and all agents, affiliates, representatives, assigns, successors, dealerships, individuals, and/or businesses who represent themselves to be affiliated with, or work for, Nissan North America, Inc.") as overbroad and compound, and inclusive of entities not owned or operated by Nissan, and individuals who are not agents of Nissan and not within Nissan's control.

Ruling: Overruled. The code-compliant response to a request to which the party is unable to comply is specified in Code of Civil Procedure § 2031.230, including specific requirements for a response that claims that the requested records are not in the custody or control of the responding party. The proper response is not to object to the request. Rather, the responding party is required to conform to the statutory requirements in drafting its response to the Request.

Defendant objects to the definition of "TRANSMISSION DEFECT(S)" ("One or more defect(s) to the CVT transmission, which results in symptoms, including hesitation and/or delayed acceleration; harsh and/or hard shifting; jerking, shuddering, and/or juddering; symptoms requiring reprogramming the transmission control module (TCM) and/or powertrain control module (PCM); malfunction, failure and/or replacement of the CVT transmission; and/or any other similar concern identified in the SUBJECT VEHICLE'S repair history.")

Ruling: Overruled. The definition describes a limited number of mechanical symptoms. It may be that an agreement between the parties on ESI search terms would have assisted the Defendant in defining the scope of this request to identify responsive documents. Plaintiffs offered to come to agreement on ESI search terms and offered to narrow the definition of "transmission defect" in the meet and confer process (Avelino Declaration at ¶5); there is nothing in the court's records indicating that the Defendant made any attempt to take advantage of these offers.

Defendant objects to the definition of "DOCUMENTS" ("shall be interpreted in accordance with California Evidence Code § 250 and also to include electronic mails and electronically stored information.") Defendant objects to the use of this word in several Contested Requests on the grounds that "the custodian of records is not reasonably apprised of what he must produce."

Ruling: Overruled. This definition is not unknown in the context of legal proceedings and discovery. California Evidence Code § 250 describes "handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." The term is not objectionable in itself. If a particular Contested Request is overbroad, vague or ambiguous such that it is unclear what documents would be responsive, a proper objection would not be to the word "document", but rather to the description of the classes or categories of documents that are requested.

RFP #1: All DOCUMENTS regarding the SUBJECT VEHICLE that are maintained in YOUR databases. [This request requires Defendant to search all databases that contain the subject vehicle's VIN . . . and produce all [sic] associated with that VIN.]

Ruling: Defendant's objections to the terms "DOCUMENTS" and "YOUR" are overruled, see discussion above. Defendant asserts that it has produced documents responsive to this request; Plaintiff's eight-page "Statement of Insufficiency" with respect to this Request takes the position that additional documents should be produced. Given that Defendant takes the position elsewhere that it objects to having to produce emails or other ESI, to the extent that Defendant's production was limited by its objections, the motion to compel is granted with respect to this Request notwithstanding at least partial production of responsive documents.

RFP #8: The warranty repair histories relating to the SUBJECT VEHICLE, as kept in the ordinary course of business by YOU, including diagnostic trouble codes, labor codes, part numbers, including part numbers applicable to any PCM, TCM, Engine Control Unit ("ECU"), or other

module update/reprogramming. [This request shall be interpreted to include all electronic records evidencing all available information, fields, and/or attachments that YOU have received from YOUR authorized repair facility(s), as well as any additional identifying and [sic] datapoints (*e.g.* internal codes) that the responding party has appended to such repairs, including but not limited to for tracking purposes.]

Ruling: Defendant's objections to the terms "YOU" and "YOUR" are overruled, see discussion above. Defendant asserts that it has produced documents responsive to this request; it is not clear whether Plaintiff's "Statement of Insufficiency" with respect to this Request #8 takes the position that additional documents should be produced. Given that Defendant takes the position elsewhere that it objects to having to produce ESI, to the extent that Defendant's production was limited by its objections, the motion to compel is granted with respect to this Request notwithstanding at least partial production of responsive documents.

RFP #15: All DOCUMENTS, including live telephone call recordings, audio recordings, tape recordings, voice messaging records, caller message recordings, digital voice recordings, interactive voice response unit (IVR/VRV) recordings, unified messaging files, transcripts, e-mails and computer-based voice mail files regarding any repairs, complaints, problems, surveys regarding the SUBJECT VEHICLE.

Ruling: Defendant's objections to the terms "DOCUMENTS" and "YOUR" are overruled, see discussion above. Defendant asserts that it has produced documents responsive to this request; it is not clear whether Plaintiff's "Statement of Insufficiency" with respect to this Request #15 takes the position that additional documents should be produced. Given that Defendant takes the position elsewhere that it objects to having to produce emails or other ESI, to the extent that Defendant's production was limited by its objections, the motion to compel is granted with respect to this Request notwithstanding at least partial production of responsive documents.

RFP #17: All DOCUMENTS, including emails, concerning any internal analysis or investigations by YOU or on YOUR behalf, regarding TRANSMISSION DEFECT(S) in NISSAN VEHICLES equipped with the CVT transmission like the SUBJECT VEHICLE. [This request shall be interpreted to include any pre-release or post-release investigation and analysis to determine the root cause of such TRASNMISSION DEFECT(S) any investigation for implementing a countermeasure or permanent repair procedure for such TRANSMISSION DEFECT(S), any such investigation into the failure rates of parts associated with such TRANSMISSION DEFECT(S), any cost analysis for implementing a proposed repair procedure, any savings analysis for not implementing proposed repair procedures, etc. Further, this Request requires Defendant to

produce all associated DOCUMENTS, including metadata where applicable, by the Custodian's name, job title and job description.]

Ruling: The court finds that the Request reasonably particularizes categories of documents in compliance with Code of Civil Procedure § 2031.030(c)(1). Defendant's objection is the first time it has articulated a question about the scope of the Request, a question which it is capable of addressing to the Plaintiff if it is unclear. The scope of the Request is limited to Nissan vehicles that have the same type of CVT transmission as the subject vehicle and that have had transmission problems that come within the definition of "Transmission Defect(s)". Plaintiffs invited Defendant to negotiate the scope of the definition of "Transmission Defect(s) as well as to define search terms and other parameters for identifying responsive ESI, a discussion that might have prevented Defendant's confusion, but Defendant waited until it was called upon to respond to a motion to compel to express its uncertainty about the scope of this Request.

Defendant's objections to the terms "DOCUMENTS", "YOU and "YOUR", "TRANSMISSION DEFECT(S)" and "NISSAN VEHICLES" are overruled, see discussion above. Defendant's global objections to producing ESI and/or emails are overruled, see discussion above.

RFP #30: All DOCUMENTS, including ESI and emails, concerning failure rates of NISSAN VEHICLES as a result of TRANSMISSION DEFECT(S).

Ruling: The court notes that, unlike Request #17, this Request is not limited to vehicles that have the same transmission type as the subject vehicle. As such, it is overbroad. Defendant's objection is sustained and the motion to compel is denied as to Request #30.

RFP #36: All DOCUMENTS, including ESI and emails, concerning any decision to issue any notices, letters, campaigns, warranty extensions, service messages, technical service bulletins, and recalls, concerning the TRANSMISSION DEFECT(S) in NISSAN VEHICLES equipped with CVT transmission like the SUBJECT VEHICLE. [This request requires the responding party to provide the underlying investigation, report, and/or analysis that resulted in the issuance of such notice, letter, campaign, warranty extension, technical service bulleting, and recall, concerning the TRANSMISSION DEFECT(S). Thus, such information shall pre-date the issuance of any such notice, letter, campaign, warranty extension, technical service bulletin, and recall.]

Ruling: The court finds that the Request reasonably particularizes categories of documents in compliance with Code of Civil Procedure § 2031.030(c)(1). Defendant's objections to the terms "DOCUMENTS", "TRANSMISSION DEFECT(S)" and "NISSAN VEHICLES" are

overruled, see discussion above. Defendant's global objections to producing ESI and/or emails are overruled, see discussion above.

RFP #57: All DOCUMENTS regarding YOUR rules, policies, or procedures since 2021 concerning the issuance of refunds to buyers or providing replacement vehicles to buyers in the State of California under the Song-Beverly Consumer Warranty Act.

Ruling: Defendant asserts that it has produced documents responsive to this request, subject to the objection that the request includes entities who are not agents of Nissan and not within Nissan's control. That objection is overruled. The request is for Nissan's own rules, policies and procedures; it is not logical to respond that those documents are in the custody and control of third parties. It is not clear whether Plaintiff's "Statement of Insufficiency" with respect to this Request #57 takes the position that additional documents should be produced. Given that Defendant takes the position elsewhere that it objects to having to produce emails or other ESI, to the extent that Defendant's production was limited by its objections, the motion to compel is granted with respect to this Request notwithstanding at least partial production of responsive documents. Defendant's objections to the terms "YOU" and "YOUR" and "DOCUMENTS" are overruled, see discussion above.

RFP #59: The Warranty Policy and Procedures Manual published by YOU and provided to YOUR authorized repair facility(s), within the state of California, since 2021 to the present. [This request will be understood to include production of any version of such manuals distributed to YOUR dealerships during the relevant time frame.]

Ruling: Defendant asserts that it has produced documents responsive to this request, subject to the objection that the request includes entities who are not agents of Nissan and not within Nissan's control. That objection is overruled. The request is for Nissan's own publications; it is not logical to respond that those documents are in the custody and control of third parties. It is not clear whether Plaintiff's "Statement of Insufficiency" with respect to this Request #59 takes the position that additional documents should be produced. Given that Defendant takes the position elsewhere that it objects to having to produce emails or other ESI, to the extent that Defendant's production was limited by its objections, the motion to compel is granted with respect to this Request notwithstanding at least partial production of responsive documents. Defendant's objection to the term "YOU" and "YOUR" are overruled, see discussion above.

RFP #73: YOUR recall policies and procedures.

Ruling: This Request is not limited to vehicles that have the same transmission type as the subject vehicle and it is not limited to a time that would be relevant to the Plaintiffs'

Complaint. As such, it is overbroad. Defendant's objection is sustained and the motion to compel is denied as to Request #73.

RFP #76 All DOCUMENTS, including ESI and emails, regarding any communication between YOU and any government agency or entity (e.g. the National Highway Traffic Safety Administration ("NHTSA"), the Environmental Protection Agency, ("EPA"), or any other similar government agency, regarding TRANSMISSION DEFECTS in NISSAN VEHICLES.

Ruling: This Request is not limited to vehicles that have the same transmission type as the subject vehicle and it is not limited to a time that would be relevant to the Plaintiffs' Complaint. As such, it is overbroad. Defendant's objection is sustained and the motion to compel is denied as to Request #76.

RFP #78: All Early Warning Reports YOU submitted to NHTSA concerning NISSAN VEHICLES.

Ruling: This Request is not limited to vehicles that have the same transmission type as the subject vehicle and it is not limited to a time that would be relevant to the Plaintiffs' Complaint. As such, it is overbroad. Defendant's objection is sustained and the motion to compel is denied as to Request #78.

RFP #79: All Transportation Recall Enhancement, Accountability and Documentation ("TREAD") reports YOU submitted concerning NISSAN VEHICLES.

Ruling: This Request is not limited to vehicles that have the same transmission type as the subject vehicle and it is not limited to a time that would be relevant to the Plaintiffs' Complaint. As such, it is overbroad. Defendant's objection is sustained and the motion to compel is denied as to Request #79.

TENTATIVE RULING #1: DEFENDANT'S OBJECTIONS ARE OVERRULED AND PLAINTIFFS' MOTION TO COMPEL IS GRANTED AS TO REQUESTS FOR PRODUCTION NUMBERS 1, 8, 15, 17, 36, 57 AND 59. DEFENDANT'S OBJECTIONS ARE SUSTAINED AND PLAINTIFFS' MOTION TO COMPEL IS DENIED AS TO REQUESTS FOR PRODUCTION NUMBERS 30, 73, 76, 78 AND 79. DEFENDANT'S OBJECTIONS TO PRODUCTION OF ELECTRONICALLY STORED INFORMATION ARE WAIVED.

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. CAPITAL ONE V. ROOKS 23CV0566

Judgment on the Pleadings

TENTATIVE RULING #2: A REQUEST FOR DISMISSAL AS TO ALL PARTIES AND ALL CAUSES OF ACTION HAVING BEEN FILED BY PLAINTIFF, AND DISMISSAL HAVING BEEN ENTERED BY THE CLERK ON AUGUST 14, 2023, THE MATTER IS TAKEN OFF 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.

3. CRAMER v. NORTON 22CV1608

(1) Motion to Amend
(2) Request for Judicial Notice
(3) Preliminary Injunction

Plaintiff requests the court's permission to amend its Motion for Preliminary Injunction because the initial Motion was not on pleading paper. The motion to amend is granted.

Plaintiff requests judicial notice of a small claims action, Case No. PSC20210106 filed on July 23, 2021, in which the court found for the Defendant Rene Norton in its October 19, 2021 ruling. 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 Complaint, filed November 14, 2022, requests the court to order Defendant to remove portions of her driveway that is on the Plaintiff's property, to require Defendant to obtain a building permit for the work and to pay for any additional surveying.

Plaintiff requests the court to issue a preliminary injunction directing Defendant "to remove any and all materials from Plaintiff's property, obtain a permit for her driveway, and to observe the property line setback."

The subject driveway was built by Defendant's predecessor in 1985 following design approval by the Planning Committee of the Auburn Lake Trails Homeowners Association. Declaration of Miche Rene Norton, dated August 31, 2023 ("Norton Declaration"), Exhibit E. The plans were also approved by the El Dorado County Planning Department on November 1, 1985. Norton Declaration, Exhibit F. In November of 2021, El Dorado County Agricultural Commission conducted a site visit following a heavy rain event after which Defendant added materials to "shore up" the driveway. Norton Declaration, Exhibit I. On January 26, 2022, the Covenants Committee of the Auburn Lake Trails Property Owners Association processed a complaint filed by Plaintiff regarding driveway encroachment by Defendant and concluded that (1) "no violation occurred, as evidenced by prior court filings and rulings; (2) The issue had already been elevated &^ [sic] actioned by other local agencies which superceded the [property owners association] authority; and (3) "the time for property line disputes is prior to final closing . . ." Norton Declaration, Exhibit J. In March, 2022, El Dorado County Code Enforcement

investigated Plaintiffs' complaint against Defendant "in concern of the driveway placement and possible unpermitted work on a culvert." As a result "Officer Young concluded that there was not a code violation and closed the issue." Norton Declaration, Exhibit K.

At Plaintiff's request the court takes judicial notice of the small claims action filed by Plaintiff against Defendant in 2021, in which this court found that Plaintiff's property complaints against Defendant had no merit.

Code of Civil Procedure 526(a)(2) authorizes a court to grant an injunction "[w]hen it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action**."**

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. Code of Civil Procedure § 527(a). "The applicant must demonstrate a real threat of immediate and irreparable injury . . . due to the inadequacy of legal remedies." (Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138. (Citations omitted.) "The plaintiff bears the burden of presenting facts establishing the requisite reasonable probability." Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.

In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. Butt v. State of California (1992) 4 Cal.4th 668, 677-678. "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo." Abrams v. St. John's Hosp. & Health Ctr., (1994) 25 Cal. App. 4th 628, 636. "If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: "(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." Costa Mesa City Employees' Assn. v. City of Costa Mesa, (2012) 209 Cal. App. 4th 298, 306.

"The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636. "It is said: '"To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should (it) be exercised in a doubtful case. . . ."'" Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148 (citations omitted).

In this case, the court finds that the Plaintiff has not demonstrated a likelihood of prevailing on the merits, given that every other complaint that he has brought against Defendant before a variety of agencies over the course of several years has been resolved in Defendant's favor. Nor is there any risk of interim harm or irreparable injury from the location of a driveway that has been in place for decades. Accordingly, Plaintiff's request for a preliminary injunction is denied.

TENTATIVE RULING # 3: THE MOTION TO AMEND IS GRANTED. PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION 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.

4. TAPIA v. HAMLIN 23CV0499

Motion to Strike

TENTATIVE RULING 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, DECEMBER 1, 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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5. MALAKHOV v. MARTINEZ 22CV0690

Demurrer

Plaintiffs/Cross-Defendants Joshua Brost and Daniel Malakhov filed an action alleging breach of contract, breach of the covenant of good faith and fair dealing, fraudulent inducement of a contract, negligent and intentional infliction of emotional distress, negligence, fraud, deceptive business practices and attempted civil extortion in a dispute arising from the construction of a custom home by Defendants/Cross-Complainants.

Defendants/Cross-Complainants 5059 Greyson Creek Drive, LLC and Brian Morrow filed a Cross-Complaint against Plaintiffs for 1) breach of contract, 2) substantial performance, 3) anticipatory breach and 4) breach of covenant of good faith and fair dealing. The Cross-Complaint was filed on March 28, 2023.

Plaintiffs/Cross-Defendants filed a demurrer to the Cross-Complaint on May 11, 2023.

Timeliness of Demurrer/Lack of Notice

Cross-Complainants argue that Cross-Defendants' demurrer was late under the deadlines specified in Code of Civil Procedure § 430.40, which requires a demurrer to be filed within 30 days of the pleading it addresses. Cross-Defendants have provided documentation of Cross-Complainants' informal agreement to extend the deadline for filing to May 10, 2023. Declaration of Timothy Ivanovich Kokhanets, dated July 7, 2023, Exhibit 1. The demurrer was filed on May 11, 2023, along with a proof of service showing delivery of the demurrer and supporting documents to Cross-Complainants on May 10, 2023. Accordingly, the demurrer was timely filed in accordance with the parties' agreement to extend the statutory deadline to May 10, 2023.

Cross-Complainants further argue that the demurrer should not be heard because the notice of the demurrer was served without a hearing date, and that the lack of notice constitutes a violation of due process. It is not clear from the record when Cross-Complainants were notified of the hearing date; the Opposition alleges that they have never been served with notice of the date time and place for hearing on the demurrer.

At the hearing on this motion held on July 14, 2023, this matter was continued to allow for proper service of notice of the hearing. Since July 14, 2023, no proof of service of the hearing date for the demurrer has been filed with the court.

TENTATIVE RULING #5: THE MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, DECEMBER 1, 2023, TO ALLOW CROSS-DEFENDANTS TO SERVE NOTICE OF THE HEARING DATE.

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

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6. MITCHELL v. NEJATIAN PC20200378

Motion for Trial Preference
OSC Hearing re: Stipulation for Order of Proof

Request for Judicial Notice

Marie Mitchell requests judicial notice of the complaints filed in two related cases involving these parties: PC20200374 and PC20200378, this court's November 13, 2020 Order for Consolidation of those two cases based on the parties' stipulation, and the court's December 20, 2021 Minute Order for the parties to brief issues relating to the structure of the cases for trial purposes.

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, Ms. Mitchell's request for judicial notice is granted.

Motion for Trial Preference

Ms. Mitchell has filed a motion for trial preference pursuant to Code of Civil Procedure § 36. That section provides, in pertinent part:

> (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
> (1) The party has a substantial interest in the action as a whole.
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.
>
> * * *
>
> (f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party.

(g) Upon the granting of a motion for preference pursuant to subdivision (b), a party in an action based upon a health provider's alleged professional negligence, as defined in Section 364, shall receive a trial date not sooner than six months and not later than nine months from the date that the motion is granted.

* * *

The motion is supported by the Declaration of Christopher Olson, M.D., dated August 18, 2023, the Declaration of Petitioner Marie Mitchell, dated August 15, 2023, and the Declaration of Ms. Mitchell's counsel, Karen Goodman, dated August 15, 2023. All of these declarations support the court's findings that Ms. Mitchell has a substantial interest in the action as a whole, and that her health is such that a preference is necessary to prevent prejudicing her interest in the litigation.

The opposing party in the two related and consolidated cases, Shan Nejatian, has filed a non-opposition to the motion for trial preference, but declares that the case will not be ready for trial for 60-90 days based on outstanding discovery, and that based on counsel's other scheduling conflicts, the trial be set no earlier than February 1, 2024.

TENTATIVE RULING #6:

(1) THE REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) THE MOTION FOR TRIAL PREFERENCE IS GRANTED.

(3) APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 15, 2023, IN DEPARTMENT NINE FOR TRIAL SETTING AND HEARING ON ORDER OF PROOF.

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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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. NAME CHANGE OF GOODEARL 23CV1213
Petition for Name Change

Petitioner filed a Petition for Change of Name on July 21, 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.

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

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

TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, DECEMBER 1, 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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8. NAME CHANGE OF BLACKOWL 23CV0752

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 17, 2023.

Proof of publication was filed on June 26, 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).

At the hearing held on July 14, 2023, the court granted the Petition with respect to Angelita Blackowl, and continued the hearing on the Petition with respect to Elizabeth Garcia Blackowl, as Elizabeth was not present and it was unclear if she still wanted to change her legal name. The court orders Elizabeth to appear to update the court on her request. If she declines to appear, the matter shall be dropped from calendar.

TENTATIVE RULING #8: THE COURT ORDERS ELIZABETH TO APPEAR TO UPDATE THE COURT ON HER REQUEST. IF SHE DECLINES TO APPEAR, THE MATTER SHALL BE 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).

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9. PEOPLE OF THE STATE OF CALIFORNIA v. RODRIGUEZ PCL20190512

Petition for 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 #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 15, 2023, IN DEPARTMENT NINE.

REQUESTS FOR ORAL ARGUMENT ARE 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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10. PEOPLE OF THE STATE OF CALIFORNIA v. KRYLOV PC20200443

Petition for Forfeiture

On August 21, 2020, Claimant Victor Krylov filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: $25,510 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the 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 People pray for judgment declaring that the money is forfeited to the State of California.

This matter has been continued since the original filings in order to allow time for the criminal proceeding to conclude.

On February 10, 2023, a competing claim of ownership was filed by Claimant Eugene Ivanov.

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 15, 2023, IN DEPARTMENT NINE.

REQUESTS FOR ORAL ARGUMENT ARE 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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