

1. 23CV2009 PETITION OF CAVENDAR

Petition for Birth Certificate

Petitioner requests court authorization to inspect her original birth certificate.

Health & Safety Code § 102705 governs adoption records as follows:

All records and information specified in this article, other than the newly issued birth certificate, shall be available only upon the order of the superior court of the county of residence of the adopted child or the superior court of the county granting the order of adoption.

No such order shall be granted by the superior court unless a verified petition setting forth facts showing the necessity of the order has been presented to the court and good and compelling cause is shown for the granting of the order. The clerk of the superior court shall send a copy of the petition to the State Department of Social Services and the department shall send a copy of all records and information it has concerning the adopted person with the name and address of the natural parents removed to the court. The court must review these records before making an order and the order should so state. If the petition is by or on behalf of an adopted child who has attained majority, these facts shall be given great weight, but the granting of any petition is solely within the sound discretion of the court.

The name and address of the natural parents shall be given to the petitioner only if he or she can demonstrate that the name and address, or either of them, are necessary to assist him or her in establishing a legal right.

Petitioner has submitted a verified Petition. There is nothing in the court's file indicating that the Petition has been forwarded to the State or that the court has received the requested documents. The court may not approve the Petition prior to receipt of the requested documents from the State.

TENTATIVE RULING #1: THE CLERK IS DIRECTED TO FORWARD THE PETITION TO THE STATE DEPARTMENT OF SOCIAL SERVICES. THE MATTER IS CONTINUED TO MARCH 8, 2024 AT 8:30 A.M. 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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2. 23CV2090 JENNINGS v. PEARSON

Compromise of Minor's Claim

This is a petition to compromise a minor's claim. The petition states the minor sustained shoulder and scalp injuries in an auto accident in 2022. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$12,000. A copy of the accident investigation report was filed with the petition as required by Local Rule 7.10.12A(4).

The petition states the minor incurred \$8,233 in medical expenses, of which \$3,356.01 is anticipated to be reimbursed from the proceeds of the settlement. Copies of a bill substantiating payment of the claimed medical expenses are attached to the petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$4,000, which represents 33% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. California Rules of Court, Rule 7.955(a)(1).

The minor's attorney also requests reimbursement for costs in the amount of \$488. There are no copies of bills substantiating the claimed costs attached to the petitions as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The petitioner also requests an order to deposit money into a blocked account in the minor's behalf, in the amount of \$4,155.49. The name and address of the depository are attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

In accordance with Local Rules of the El Dorado County Superior Court, Rule 7.10.12D, the presence of the minor is required at the hearing on the Petition.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY JANUARY 5 2024 IN DEPARTMENT NINE.

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. 23CV0297 ENSMINGER v. ROTH AUS

Claim of Exemption Hearing

Plaintiff claimed amounts were unjustifiably withheld from a security deposit for the rental of a home. Judgment for Plaintiff was entered for a total of \$2,437.83 following hearing on August 15, 2023. Defendant filed an amended Claim of Exemption on November 15, 2023, claiming exemption of funds held by the trustees of the William and Mary M. Rothaus Trust on the grounds that the trust is not a judgment debtor and is not listed in the writ of execution. Defendant cites Financial Code § 17410:

(a) Escrow or trust funds are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent, and in no instance shall such escrow or trust funds be considered or treated as an asset of the licensee or person performing the functions of an escrow agent.

(b) Interest paid or payable on funds deposited in escrow by a licensee are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY JANUARY 5, 2024, IN DEPARTMENT NINE.

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. 23CV370 VELLA v. NORTHSIDE ELEMENTARY SCHOOL, ET AL

Compromise of Minor's Claim

This is a Petition to compromise a minor's claim. The Petition states the minor sustained injury from a snake bite on his hand. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$52,000.

The Petition states that outstanding medical bills incurred for treatment of the minor and to be deducted from the total settlement equal \$18,776.63. An invoice from the Department of Health Care Services requesting reimbursement for health care services provided to the minor is attached to the Petition, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered from the injuries allegedly suffered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$12,517.73, which represents approximately 24% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.955(a)(1).)

The minor's attorney also requests reimbursement for costs in the amount of \$1,929.10. The Petition specifies that these costs are for filing fees, service of process, medical records, postage, court appearance fees, photocopies and telephone costs.

The Petition requests an order to deposit money into a tax-free structured settlement annuity policy in the minor's behalf, in the amount of \$18,776.54.

On December 28, 2023 the minor's attorney filed a declaration which addressed the issues identified in the last tentative ruling. As such, Petition is granted.

TENTATIVE RULING #4: PETITION IS GRANTED.

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. 23UD0353 FICHTNER v. BLADES

Demurrer

On December 7, 2023, Defendant filed a Demurrer to Plaintiff's Unlawful Detainer Complaint, alleging that the Notice to Pay or Quit was never served prior to service of the Complaint and that the Notice failed to include required information under Code of Civil Procedure (CCP) § 1161(2). As such, she argues that the Complaint incorporates a facially defective notice, subjecting it to a demurrer.

On December 28, 2023, Plaintiff filed a Response, in which she declares that the Notice does include the required information under CCP § 1161(2) and that the Plaintiff herself personally served the Notice on Defendant.

The court notes that Defendant has not identified what specific information she believes is required but not included in the Notice. Upon review of the Notice, the court finds that the Notice does include the information required under CCP § 1161(2). As to service, the court finds that Plaintiff has attached to her response the Notice, which includes a proof of service signed by Plaintiff under penalty of perjury.

The court overrules the Demurrer. Defendant is directed to answer the Complaint within 5 days.

TENTATIVE RULING #5: THE COURT OVERRULES THE DEMURRER. DEFENDANT IS DIRECTED TO ANSWER THE COMPLAINT WITHIN 5 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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Tentative Rulings

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6. 23CV2001 WRIGHT v. EL DORADO COUNTY OFFICE OF EDUCATION

Compromise Minor's Claim

This is a petition to compromise a minor's claim. The Petition states the minor sustained physical injuries and emotional trauma in an incident involving a El Dorado County Office of Education employee. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$100,000.

The petition states the minor incurred \$565 in medical expenses anticipated to be reimbursed from the proceeds of the settlement. Copies of a bill substantiating payment of the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has not fully recovered from the emotional trauma allegedly suffered. There is no report concerning the minor's condition and prognosis of recovery attached to the Petition, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$25,000, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. California Rules of Court, Rule 7.955(a)(1).

The minor's attorney also requests reimbursement for costs in the amount of \$545. There are no copies of bills substantiating the claimed costs attached to the petitions as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

Petitioner requests an order to deposit money into a special needs trust established under Probate Code § 3604 for the benefit of the minor, in the amount of \$73,889.91.

In accordance with Local Rules of the El Dorado County Superior Court, Rule 7.10.12D, the presence of the minor is required at the hearing on the Petition.

TENTATIVE RULING #6: THE MATTER IS CONTINUED TO 8:35 A.M. ON FRIDAY, JANUARY 12, 2024, TO ALLOW PETITIONER AN OPPORTUNITY TO FILE DOCUMENTATION OF COSTS AND OF THE MINOR'S DIAGNOSIS AND PROGNOSIS IN COMPLIANCE WITH LOCAL RULES OF THE EL DORADO COUNTY SUPERIOR COURT, RULES 7.10.12A(6) AND 7.10.12A.(3).

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7. PC20200162 POULTON v. EL DORADO COUNTY

Request for Trial Preference

Plaintiff requests trial preference in this action for severe injuries resulting from a motor vehicle collision because he is over 70 years old, can expect a shortened life span based on his injuries from the collision, and has recently undergone extended hospitalization from conditions related to his injuries.

The parties engaged in a mandatory settlement conference, which was continued by the court three times between May and November, 2023. Plaintiff's attorney represents that a major issue preventing settlement is the question of apportionment of liability among multiple defendants. Declaration of Roger Dryer, dated November 14, 2023. No trial date has yet been set.

Code of Civil Procedure § 36(a) states:

(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.

The collision occurred on May 2, 2019, and the Complaint was filed on March 13, 2020, and the Second Amended Complaint was filed on November 20, 2020. According to Plaintiff, discovery began on September 24, 2021, and all responses were served by June 16, 2023. All noticed depositions have been completed.

Defendants Cole and Caltrans have filed a Notices of Non-Opposition to Plaintiff's motion. Defendant California Department of Parks and Recreation has filed an opposition to the motion, citing Local Rules of the El Dorado County Superior Court, Rule 7.12.11 and 7.12.12, which list pre-trial procedures, as well as California Rules of Court, Rule 3.1335:

- (a) Noticed motion or application required

A party seeking to advance, specially set, or reset a case for trial must make this request by noticed motion or ex parte application under the rules in chapter 4 of this division.

(b) Grounds for motion or application

The request may be granted only upon an affirmative showing by the moving party of good cause based on a declaration served and filed with the motion or application.

Defendant California Department of Parks and Recreation argues that Plaintiff's evidence submitted to establish his age is insufficient, as age must be established by the party's declaration or an official record, not by an inadmissible declaration of Plaintiff's counsel. It further argues that the medical documentation attached to Plaintiff's counsel's declaration does not include his "medical diagnosis and prognosis" as required by Code of Civil Procedure § 36.5. Defendant argues that Plaintiff "will live for years" and that his claim that his life has been shortened contradicts his claim that he will require damages to cover many years of life expectancy, and that on these grounds the motion should be denied. If the court grants the motion, Defendant California Department of Parks and Recreation demands that its due process rights be protected by setting the trial date no sooner than six months from now because Defendant California Department of Parks and Recreation claims the need to conduct additional discovery based on new medical information that has been disclosed as support for the motion.

Plaintiff responds that his date of birth has been concretely established through discovery and is not in dispute. Plaintiff further responds that Defendants have had more than three years to conduct discovery and would have any additional time required between now and the trial date.

The court finds that Plaintiff has met the requirements of Code of Civil Procedure § 36(a), and has made an affirmative showing of good cause supported by a declaration that attaches detailed evaluations of Plaintiff's medical condition. Defendant California Department of Parks and Recreation misstates the requirements of Code of Civil Procedure § 36.5; the sentence cited by Defendant as a requirement of including a "medical diagnosis and prognosis" is actually a statement authorizing evidence of any medical condition that supports the motion to be signed by Plaintiff's attorney "on information and belief;" it is not a substantive requirement that certain types of medical information be included in the declaration.

Defendant California Department of Parks and Recreation can specify what additional discovery it requires as part of the process of selecting a trial date.

TENTATIVE RULING #7: PLAINTIFF'S MOTION FOR TRIAL PREFERENCE IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 5, 2024, IN DEPARTMENT NINE TO SELECT A TRIAL 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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8. 23CV0238 TRACY v. EL DORADO COUNTY

Motion for Reconsideration

El Dorado County (“County”) seeks reconsideration of this court’s grant of Plaintiff’s Petition for relief from the six-month deadline for filing an action against the County imposed by Government Code § 954.4. That section prohibits the filing of an action against a public entity without first filing a written claim:

[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

The six-month deadline for filing such a claim is set forth in Government Code § 911.2(a):

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action.

Petitioner’s son died in the custody of the County on November 4, 2021. Petitioner filed a claim against the County on May 27, 2022, approximately six months plus three weeks after the date of death. The County rejected the claim for being untimely. Petitioner filed an application for leave to present a late claim pursuant to Government Code § 911.4 and received no response. By statute this application was deemed rejected as of August 19, 2022. Government Code § 911.6(c).

Petitioner appealed to the superior court pursuant to Government Code § 946.6, which allows a claimant to be relieved of the six-month deadline if the court finds that the failure to file the claim is based on “mistake, inadvertence, surprise, or excusable neglect, . . .” Government Code § 946.6(c). “The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.” Government Code § 946.6(e).

The decision to grant or deny a petition seeking relief under section 946.6 is within the sound discretion of the trial court and will not be disturbed on appeal except for an abuse of discretion. However, the trial court’s discretion to grant relief is not “unfettered.” It is “to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.’ ” Section 946.6 is a remedial statute intended “to provide relief from technical rules that

otherwise provide a trap for the unwary claimant.” As such, it is construed in favor of relief whenever possible.

Bettencourt v. Los Rios Cmty. Coll. Dist., 42 Cal. 3d 270, 275 (1986) (citations omitted.)

The court filed a Tentative Ruling in anticipation of the hearing on the Petition, and analyzed the arguments presented as to mistake, inadvertence, surprise, or excusable neglect in accordance with applicable statute. In the course of that analysis, the court considered the present case to be somewhat analogous to the facts in the case of County of Santa Clara v. Superior Court, 4 Cal.3d 545 (1971), in which the California Supreme Court did not find an abuse of discretion in the trial court’s grant of relief from the deadline based on emotional trauma that delayed parents’ filing of a claim for a wrongful death action for their child.

In the Tentative Ruling the court opined that the County of Santa Clara v. Superior Court case was factually distinguishable from Petitioner’s claim, because in that case the parents did not discover the cause of death until just before the deadline for filing a claim, whereas here Petitioner had knowledge of the circumstances leading up to and the caused of her son’s death during the full statutory period and that he was in the custody of the County in the moments leading up to his death.

At the hearing on the Petition conducted on August 4, 2023, Plaintiff produced a coroner’s report, of which the court took judicial notice. That report concluded that the death was a suicide, and Plaintiff newly argued that the January 14, 2022, date of this report should be considered the date that the cause of action accrued because that was the first time she was informed that the death was considered a suicide. This interpretation would render her May 27, 2022 claim timely. On that basis, the court granted Plaintiff’s Petition.

The County seeks reconsideration of the court’s August 4, 2023 decision. As to the timeliness of this motion, the County cites Code of Civil Procedure § 1008, which allows a motion for reconsideration up to ten days after service of written notice of entry of the order. The County states that it was never served with written notice of the entry of the order by the prevailing party, and so this motion is timely. The County notes that the statutory time period begins for a motion for reconsideration to run from the date of the prevailing party’s notice of entry of the order and not the Clerk’s service of an order.¹

¹ “When a motion is granted or denied, unless the court otherwise orders, notice of the court’s decision or order shall be given by the prevailing party to all other parties or their attorneys, in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes.” (Code of Civil Procedure § 1019.5, subd. (a).) The purpose of such notice is to start the time running on a party’s ability to seek reconsideration. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2006) ¶ 9:320.1, p. 9(l)–116.) Here, DOC was statutorily mandated to serve notice of the trial court’s order; consequently, its service of notice of entry on August 23, 2005, started the running of the 10–day time period. It follows that Forrest’s motion for reconsideration was timely filed on August 29, 2005.” Forrest v. Dep’t of Corps., 150 Cal. App. 4th 183, 203 (2007).

The County notes that the Plaintiff's request for judicial notice of the coroner's report was first made at the August 4, 2023, hearing, and the County had no notice or opportunity to oppose the request. Declaration of Jacob Graham, dated September 25, 2023, ¶16. Plaintiff's counsel responds that the County did not request additional time to respond to the coroner's report or an opportunity to oppose the request for judicial notice. Declaration of Nicholas Wagner, dated December 20, 2023, at ¶4.

The County also notes that Plaintiff's counsel presented a Reply brief to the court for the first time at the hearing, and the matter had to be trailed to allow the court an opportunity to review the Reply. To date, the Reply brief is not in the court's file.

The County notes that while the County and the court prepared arguments about the timeliness of Plaintiff's claim as framed by Plaintiff's Petition, Plaintiff came to the hearing with new arguments about the date of the accrual of the cause of action.

In response to the new argument, the County submitted the Declaration of Detective Elledge, dated September 25, 2023, ("Elledge Declaration") describing the next of kin notification that he provided to Plaintiff on November 5, 2021, including expression of sympathy over her son's suicide, and his recounting of Plaintiff's statement that the decedent had talked about suicide but she didn't think he would do it. Elledge Declaration at ¶3. Plaintiff objects to this Declaration as vague, ambiguous and uncertain because it does not specifically declare that Elledge told Plaintiff that her son had committed suicide.

The County's motion requests the court to schedule a short cause hearing on the factual issue that is central to this case, the date that Plaintiff was on notice of the cause of her son's death. Plaintiff claims it was the January 14, 2022, date of the coroner's report, and the County has submitted evidence that she was informed on November 5, 2022 by Detective Elledge.

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 5, 2024, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. PC20210162 ANDERSON v. PROGRESS HOUSE

Motion for Summary Judgment/Summary Adjudication

The court needs to inquire of the parties regarding the respective positions before ruling on the Motion. Parties are ordered to appear.

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 5, 2024, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. 23CV1110 WINN v. CHARITABLE SOLUTIONS, LLC

Demurrer

Plaintiff's First Amended Complaint ("FAC") alleges that Plaintiff is the assignee of a real property purchase and sale agreement ("the Contract") for a vacant property consisting of a 71-lot subdivision ("the Property"). According to the FAC, the Contract was executed on December 10, 2016, and was assigned to Plaintiff on May 30, 2017.

Defendants Safari Ross and Angie Ross, are included in the FAC in their capacity as trustees of the Angie Ross Marital Trust, which is the successor in interest to Defendant Carl Ross Trust ("Trust Defendants"), following the death of Carl Ross. Defendants Yes 2 Ventures and Safari Wineries ("Corporate Defendants") are corporations that claim an ownership interest in the Property.

According to the FAC, during the due diligence period Plaintiff identified certain issues that prevented closing escrow, including a requirement of paying HOA dues which Mr. Ross had not paid, and an unpermitted road that needed to be permitted with El Dorado County. Mr. Ross passed away before these issues were remedied. The FAC alleges that the Trust Defendants did not remedy these issues, and instead of performing the Contract, they conveyed the Property to the trust. Subsequently, with notice of Plaintiff's claims under the Contract, the FAC alleges that the Corporate Defendants purchased the Property in July, 2023.

Plaintiff seeks a declaratory judgment as to all Defendants of her right to close on the sale of the Property and that the Corporate Defendants are not bona fide purchasers. She further seeks specific performance of the Contract as to the Trust Defendants. Finally, the FAC includes a cause of action for breach of contract as to the Trust Defendants.

The Trust Defendants filed this demurrer, arguing that all of the causes of action in the FAC depend on the existence and validity of the Contract, and on the assignment of the Contract to Plaintiff.

Trust Defendants note that Plaintiff has not attached a copy of the Contract to the Complaint, nor has she alleged any of the terms of the Contract in the FAC. To be valid, they argue, the Contract must be in writing to comply with the statute of frauds. Code of Civil Procedure § 1624(a). Otherwise it is unenforceable.

Trust Defendants cite Code of Civil Procedure § 430.10(g), which provides for a demurrer to an action founded on contract, where, as in this case: "it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct."

The Trust Defendants further argue that the statute of limitations has run on Plaintiff's contract claims, which accrued on December 10, 2016 when the Contract was allegedly executed. The statute of limitations for a breach of contract claim is four years. Code of Civil

Procedure § 337(a). Specific performance is an equitable remedy that is predicated on the existence of a valid and enforceable contract. If the statute of limitations for the contract claim has passed, then the specific performance and declaratory judgment causes of action are also subject to demurrer.

Finally, Trust Defendants note that the FAC contains no specific allegations as to Angie Ross, and so the FAC fails to state a claim as to that individual Defendant.

Contract Pleading Requirements

Trust Defendants have cited the language of the following cases to argue that the FAC is insufficient to maintain an action for breach of contract without either attaching the contract or alleging its material terms.

“To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff.” Richman v. Hartley, 224 Cal. App. 4th 1182, 1186 (2014).

“A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. [Citation.] In order to plead a contract by its legal effect, plaintiff must ‘allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.’ [Citation.]” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489, 49 Cal.Rptr.3d 227.)

Heritage Pac. Fin., LLC v. Monroy, 215 Cal. App. 4th 972, 993 (2013).

In an action based on a written contract, a plaintiff may plead the legal effect of the contract rather than its precise language. (See generally 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, §§ 388, 389, 479, 480, 481, pp. 486-487, 572-574.) CPS has chosen to proceed in this manner, and though the complaint could have been clearer, it satisfactorily alleged (1) that the insurance policy obligated TIG Insurance to defend and indemnify CPS against suits seeking damages, and (2) that under the terms of the policy, SHC's setoff claim fell within the scope of that contractual obligation. Whether CPS can prove these allegations (that is, whether its interpretation of the applicable contractual language is correct in light of what we have said here) remains to be seen, but the allegations are sufficient to establish a prima facie right to relief.

Constr. Protective Servs., Inc. v. TIG Specialty Ins. Co., 29 Cal. 4th 189, 198–99, 57 P.3d 372 (2002), as modified (Nov. 14, 2002)

Plaintiff argues that she had adequately plead the existence of a contract, and that it is executed on the California Association of Realtors Vacant Land Purchase Agreement and Joint Escrow Instructions form, with a specific date, and that such pleading is sufficient for the purposes of surviving a demurrer. Plaintiff asserts that the date for determining the applicable statute of limitations is September, 2020, when the Trust Defendants refused to close on the purchase of the Property.

However, a reference to a blank form does not provide the terms of a contract executed on that form without the information that must be filled in by the parties to specify the particular terms of the transaction. Additionally, Plaintiff alleges that the time for performance of the December, 2016 Contract was in September 2020, but at the same time alleges that the contingencies that prevented closing escrow before that date had not yet been resolved during those three years. The long delay in closing and the lack of resolution of substantial contingencies creates further uncertainty about the legal effect of the terms of the alleged agreement or the 2020 date that is alleged as the date for performance. Because there is no description of the relevant terms of the Contract, there is no basis to accept Plaintiff's argument that the statute of limitations should commence in September 2020. Further, there are no allegations in the FAC regarding the terms of the assignment other than the parties and the date. The FAC's skeletal allegations regarding essential details of the Contract fail to "allege the substance of its relevant terms" in a manner sufficient to resist Defendants' demurrer.

Defendants' argument that there are no specific allegations in the FAC as to any act or omission by Angie Ross is also well taken and provides additional support for sustaining the demurrer.

TENTATIVE RULING #10: DEFENDANTS' DEMURRER IS SUSTAINED AS TO ALL CAUSES OF ACTION, WITH LEAVE TO AMEND WITHIN TEN DAYS OF THIS ORDER.

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

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. PC20210323 DELAGOSTINO v. WHITE

(1) Motion for Summary Judgment/Summary Adjudication

(2) Motion for Summary Judgment/Summary Adjudication

Plaintiffs are suing both Defendant Oneto and Defendant White for injuries suffered as the result of an attack on Plaintiff Delagostino by a bull on Plaintiffs' property on March 28, 2021. A central question in the case is whether the bull belonged to Defendant White, who kept a bull on Plaintiffs' property by agreement with Plaintiffs, or whether it belonged to Defendant Oneto, who kept a bull on an adjacent property ("Scheiber property").

Oneto has filed a motion for summary judgment, or in the alternative, summary adjudication, as to both the Plaintiff's Complaint, and as to Defendant White's Cross-Complaint. White moves for summary judgment, or in the alternative, summary adjudication, as to Plaintiff's Complaint.

[S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

"A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641 (2017); Code of Civil Procedure § 437c(p)(2).

Negligence

The four elements of a negligence claim are well established: (1) duty; (2) breach; (3) proximate causation; and (4) injury. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213, 276 Cal.Rptr.3d 434, 483 P.3d 159 (*Brown*) ["To establish a cause of action for negligence, the plaintiff must show that the 'defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.' "]; *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158, 210 Cal.Rptr.3d

283, 384 P.3d 283; *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292, 253 Cal.Rptr. 97, 763 P.2d 948.)

L. Firm of Fox & Fox v. Chase Bank, N.A., 95 Cal. App. 5th 182, 192 (2023), reh'g denied (Sept. 25, 2023), review denied (Nov. 29, 2023).

As to the negligence cause of action, White's arguments can be summarized as follows: White did not breach any duty of care owed to Plaintiffs because her bull was branded and if Plaintiff could not identify the attacking bull by White's brand then it was not White's bull. Oneto's motion also denies liability on the grounds that, lacking any evidence that Oneto's bull entered Plaintiff's property, neither Plaintiff nor Cross-Complainant can establish that Oneto breached a duty of care because it was not Oneto's bull that attacked Plaintiff on Plaintiff's property.

It is clear that the various parties have a factual dispute as to the identity of the bull. Neither of the eyewitnesses to the attack could identify the bull by distinctive markings or brand. Declaration of John Arends, dated September 21, 2023 ("Arends Declaration"), Exhibits G, I; Declaration of Samantha Weinstein, dated September 15, 2023 ("Weinstein Declaration"), Exhibits C, H. The investigating officer from the El Dorado County Animal Services concluded that she didn't have enough information about the identity and ownership of the bull to issue a citation to the owner. Weinstein Declaration, Exhibit H. White testified that she had encountered Oneto's bull on Plaintiffs property in the past and had moved it to the other side of the fence through an unlocked gate. Arends Declaration, Exhibit H.; Weinstein Declaration, Exhibit B.

The identity and ownership of the bull being a triable issue of material fact that is necessary to determining potential liability for negligence; however, at the same time, both defendants contend that no duty that may have been owed to Plaintiff was breached. Upon review of the file, Plaintiff only responded to Defendant Oneto's motion. In that response, Plaintiff fails to address the issue of duty. The court finds that both Defendants have sufficiently alleged that neither had a duty to Plaintiff that was breached under the negligence cause of action which thereafter shifted the burden to Plaintiff to provide evidence of a triable issue of material fact on these elements of the cause of action. Plaintiff has failed to do so for either Defendant. Consequently, the court finds no triable issues of material fact on the issues of breach and duty and grants both Defendant's motions for summary adjudication.

Strict Liability

"The doctrine of strict liability for harm done by animals has developed along two separate and independent lines: (1) Strict liability for damages by trespassing livestock, and (2) strict liability apart from trespass (a) for damages by animals of a species regarded as inherently dangerous, and (b) for damages by animals of a species not so

regarded but which, in the particular case, possess dangerous propensities which were or should have been known to the possessor.” (Citations) Not surprisingly, plaintiff does not cite to any cases holding that Angus cows have an inherently dangerous nature, and our research has disclosed no such cases. In fact, relevant cases state the opposite.

Thomas v. Stenberg, 206 Cal. App. 4th 654, 665 (2012) (citations omitted). *See also*, Mann v. Stanley, 141 Cal. App. 2d 438, 296 P.2d 921 (1956).

Oneto and White cite relevant authorities establishing that as a matter of law bulls are not presumed to have an inherently dangerous nature. Further, they argue that there is no evidence that the bulls in question were aggressive, such that the Defendants were not on notice of any dangerous tendency that would create liability.

In response, Plaintiffs request leave to amend the Complaint to clarify that the strict liability claim is based upon the trespass of an animal onto Plaintiffs’ land, and not on the inherently dangerous nature of bulls generally or any known dangerous propensity of a particular bull. “In opposing a summary adjudication motion, a plaintiff may properly request leave to amend the complaint. (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230, 31 Cal.Rptr.2d 525.) The trial court should then exercise its discretion in deciding whether the amendment would be ‘in furtherance of justice.’ (Ibid., quoting Code Civ. Proc., § 473.)” Soderberg v. McKinney, 44 Cal. App. 4th 1760, 1773 (1996).

However, at a minimum, the cause of action based on strict liability cannot withstand a summary adjudication motion as to Defendant White even if the First Amended Complaint is amended, since, if it was White’s bull that attacked Plaintiff, the bull was not trespassing.

As such, the court grants both motions for summary adjudication as to the strict liability cause of action, but grants leave to amend as to the strict liability cause of action against Oneto, finding that motion is being granted due to a defect in the pleading which may be cured in an amended complaint.

Loss of Consortium

Defendant White moves for summary judgment/summary adjudication of Plaintiff Zweck’s claim for loss of consortium. As both the negligence cause of action and the strict liability causes of action have been disposed of by summary adjudication, the court grants Defendant White motion for summary adjudication as to this cause of action as it relies on the viability of the other two causes of action. As all causes of action have been disposed of as to this Defendant, Defendant White’s motion for summary judgment is granted. The cause of action, however, remains as to Defendant Oneto.

TENTATIVE RULING #11:

- (1) DEFENDANTS ONETO'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**
- (2) DEFENDANTS WHITE'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.**
- (3) DEFENDANT ONETO'S MOTION FOR SUMMARY ADJUDICATION AS TO THE CAUSE OF ACTION FOR NEGLIGENCE IS GRANTED.**
- (4) DEFENDANT ONETO'S MOTIONS FOR SUMMARY ADJUDICATION OF THE CAUSE OF ACTION BASED ON STRICT LIABILITY IS GRANTED, WITH LEAVE TO AMEND WITHIN TEN DAYS OF THIS ORDER.**

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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12. 22UD0152 OAKMONT PROPERTIES, LLLC v. LUNSFORD

Motion to Set Aside Default

Plaintiff filed a Complaint for unlawful detainer on May 24, 2022, requesting back rent at the rate of \$72.00 per day from April 13, 2022, and attorney's fees. The lease term was from November 2021, through November 2022. The lease provides for recovery of attorney's fees for the prevailing party of up to \$1,200, ten percent interest per year on unpaid amounts and charges for collection agency fees. See Complaint, Exhibit 1, ¶ 32 (Default by Resident).

Proof of Service of the Complaint, filed with the court on May 11, 2023, indicates service through posting and certified mail at the address of the leased property on June 29, 2022. This service of process was in compliance with an Order from the court authorizing service by posting at and certified mail to Defendant's last known address. This Order was based on the Declaration of Diligence of the process server, which showed that between June 8, 2022 and June 12, 2022 personal service could not be accomplished because the property appeared to be vacant.

An article of mail directed to Defendant at the leased property address mailed on May 31, 2022, was returned undeliverable with no forwarding address.

Plaintiff moved for default judgment on June 14, 2023, which was granted by the court on the same date.

Defendant's motion to set aside the default judgment includes a Declaration that Defendant moved out of the leased property on May 30, 2022, prior to the June, 2022 attempts made at personal service at that address, and six weeks before the Complaint and Summons were served by posting and certified mail at the address of the leased property.

Defendant moves to vacate and set aside the default pursuant to Code of Civil Procedure § 473(d) on the ground that she was never properly served with the summons and complaint because she had vacated the property prior to the date of service. Defendant's Declaration states that she did not receive the Summons and Complaint until September 5, 2023.

Defendant's motion was made on an *ex parte* basis, and at the hearing on September 14, 2023, the court set the matter for hearing on December 1, 2023, and ordered the Defendant to serve notice on the Plaintiff. Proof of service of notice of the hearing was filed on October 18, 2023.

There is no opposition to the motion in the court's file.

Code of Civil Procedure § 473(b) allows the court to relieve a party or his or her legal representative from a judgment that is a result of “mistake, inadvertence, surprise, or excusable neglect.” The application “shall be” accompanied by a copy of the answer that the moving party proposes to file, “otherwise the application shall not be granted.” The statute further requires that the motion be made within six months of the entry of the default judgment.

Defendant has complied with the statutory deadlines for filing a motion to set aside a default. The court finds that, notwithstanding Plaintiff’s compliance with the court’s Order for service by posting and certified mail, the fact that Defendant no longer lived at the address where service was made is sufficient evidence of “surprise or excusable neglect.”

The statute further requires the motion to be accompanied by the answer, motion or other pleading proposed to be filed. At the initial hearing on the motion held on December 1, 2023, the court continued the matter to allow Defendant an opportunity to file an amended motion in compliance with Code of Civil Procedure § 473(b). Defendant filed an amended motion, including an Answer, on December 11, 2023, and a proof of service of notice of the hearing on the motion was filed with the court on December 15, 2023.

TENTATIVE RULING #12: DEFENDANT’S MOTION TO SET ASIDE DEFAULT IS GRANTED.

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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13. PC20200368 PEOPLE OF THE STATE OF CALIFORNIA v. HARRIS

Petition for Forfeiture

On August 3, 2020 the People filed a petition for forfeiture of cash in the total amount of \$285,347.90; 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.

Claimant Harris filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of petition.

Proof of service of notice of the hearing was served and filed with the court on December 12, 2023.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY JANUARY 5, 2024, IN DEPARTMENT NINE.

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.

14. PCL20210539 CROWELL v. LIGHTHALL

Motion to Set Aside Default

An application for default judgment against Defendant Joshua Lighthall (“Defendant”) was filed on August 7, 2023, pursuant to Code of Civil Procedure § 585(b). At a hearing on September 18, 2023, the court entered the default as requested following arguments by Plaintiff, but Defendant did not appear. At the same hearing, Defendant Lance Lighthall was dismissed from the case at Plaintiff’s request.

Plaintiff’s 2023 application for default judgment explains that Defendant Joshua Lighthall had never answered the Complaint for rescission or otherwise appeared in the case, which was filed in 2021 and specified \$15,000 as restitution damages. Plaintiff initially requested a default judgment on August 20, 2021.

Plaintiff’s 2023 Memorandum of Points and Authorities in support of default judgment is also a signed Declaration, which explains that the extended period of time between the filing of the initial application for default judgment in 2021 and the application for default judgment in 2023 is due to the fact that the case was stayed in February, 2022 based on a pending bankruptcy action. That action has resulted in discharge of Plaintiff’s claim in bankruptcy as to Defendant Lance Lighthall and as a result, Plaintiff requested the dismissal of Lance Lighthall as a Defendant at the September 18, 2023, hearing.

Plaintiff asserts that there may have been some confusion on the court’s part as to whether Joshua Lighthall was included in Lance Lighthall’s bankruptcy action, which may explain why the court did not grant the default judgment in February of 2022. Plaintiff asserts that the stay never applied to Joshua Lighthall and that neither the bankruptcy court’s January 6, 2023, Order nor any other document has referenced Joshua Lighthall as a debtor. Accordingly, in 2023, Plaintiff renewed his request for a default judgment as to Joshua Lighthall.

Plaintiff filed a Supplemental Memorandum of Points and Authorities, also signed as a Declaration, attaching a decision by an Administrative law Judge (“ALJ”) on behalf of the California Department of Consumer Affairs, Bureau of Automotive Repair (“BAR”), dated August 2, 2022, following a hearing on a citation issued to Lighthall Classics, the auto repair business with respect to which this dispute arose. The citation was for doing business as an automotive repair dealer without a valid license. The citation resulted from a complaint brought by Plaintiff, and the ALJ concluded, following a hearing, that Lance Lighthall, doing business as Lighthall Classics, had performed auto repair services at a business location and received compensation from Plaintiff without the benefit of BAR registration or a license from the state. This conclusion is the basis for Plaintiff’s argument that any purported contract between the parties was

unenforceable pursuant to Business and Profession Code § 9884.16,² and that Plaintiff was, accordingly, entitled to the equitable remedy of rescission and restitution as stated in his Complaint. However, Defendant Joshua Lighthall was not referenced in that decision.

Proof of service of notice of the motion for default states that it was served by mail on August 7, 2023, to 4213 Sunset Lane, Suite 110, Shingle Springs, CA 95682, which was the business address of Lighthall Classics. At the hearing on this motion held on December 1, 2023, the court noted that while the motion to set aside the default judgment was filed in pro per, the court's records indicate that Joshua Lighthall is represented by counsel, and the application for default was not directed to counsel's address.

Defendant's motion to set aside the default judgment, filed on October 12, 2023, is based on "inadvertence and/or oversight", specifically because he asserts he did not receive any documents, had moved to a new address five months previously, and was not aware that he needed to update his address with the court. As a defense to the action he asserts that he was not an owner of the business and was not involved in business decisions.

Code of Civil Procedure § 473(b) allows the court to relieve a party or his or her legal representative from a judgment that is a result of "mistake, inadvertence, surprise, or excusable neglect." The application "shall be" accompanied by a copy of the answer that the moving party proposes to file, "otherwise the application shall not be granted." The statute further requires that the motion be made within six months of the entry of the default judgment.

At the hearing on this motion held on December 1, 2023, the court found that Defendant has complied with the statutory deadlines for filing a motion to set aside a default, and that the fact that the Defendant's address in the official court record is that of his counsel and that there was no service of the application for default judgment at that address is sufficient evidence of "surprise or excusable neglect." However, the statute further requires the motion to be accompanied by the answer, motion or other pleading proposed to be filed. No Answer had been filed with the court at the time of the hearing.

[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite v. Southern Pacific Co.* (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors*, supra, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be

² "A person required to have a valid registration under the provisions of this chapter shall not have the benefit of any lien for labor or materials, including the ability to charge storage fees in accordance with applicable laws, or the right to sue on a contract for motor vehicle repairs unless the person possesses a valid registration." Business and Profession Code § 9884.16. 63

overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985)

At the first hearing on the motion held on December 1, 2023, the court continued the matter and ordered Defendant to file an amended motion in compliance with Code of Civil Procedure § 473(b).

On December 28, 2023, Defendant Joshua Lighthall filed an amended motion in compliance with the statute.

On December 18, 2023, Plaintiff filed a Further Opposition to Defendant's motion for relief from default. Plaintiff takes issue with Defendant's claim that he did not receive mail at the former business address and argues that his failure to receive mail was due to a lack of diligence in updating his address with the court and his request for relief from default should be estopped because he had previously received mail at the business address. However, this is not a procedural matter. Notice of the motion, especially notice of an impending default judgment, is a matter of due process and the court cannot proceed to consider the merits of the motion until it is clear that all parties have notice. See Greenup v. Rodman, 42 Cal. 3d 822, 829, (1986).

Plaintiff's most recent filing claims that Defendant has already been found liable in an administrative proceeding by the Bureau of Auto Repair. However, Defendant Joshua Lighthall, against whom default is sought, was not mentioned in that decision, and the substance of his defense to this suit is that he is not an owner of the business against which Plaintiff seeks a judgment.

TENTATIVE RULING #14: DEFENDANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT IS GRANTED.

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.