

**1. 23CV1270 BARCLAYS BANK DELAWARE v. PULFER**

**Motion to Deem Admitted Matters Specified in Requests for Admissions**

A Complaint alleging credit card debt allegedly owned by Defendant to Plaintiff was filed on August 1, 2023, and Defendant was personally served with the Summons and Complaint on August 16, 2023. Plaintiff sent Defendant Requests for Admissions on September 11, 2023, and Defendant has not responded. Declaration of Angela Malekian, dated November 27, 2023, Exhibit 1. Plaintiff sent a meet and confer letter to Defendant on October 23, 2023, to which Defendant has not responded. Declaration of Angela Malekian, dated November 27, 2023, Exhibit 2. Proof of Service of notice of the hearing on the motion was filed with the court on November 13, 2023. There is no opposition to the motion on file with the court.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Plaintiff includes no specific information for the court consider in imposing a monetary

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sanction as required by Code of Civil Procedure § 2033.280(c). As such, the court uses its discretion to impose a nominal award of \$150 for Defendant's failure to respond, which necessitated this motion. The \$150 sanction may be added to the judgment if Plaintiff is able to obtain one or it may be enforced separately.

**TENTATIVE RULING #1: PLAINTIFF'S MOTION IS GRANTED. THE COURT ORDERS DEFENDANT TO PAY PLAINTIFF \$150 AS A MONETARY SANCTION FOR DEFENDANT'S FAILURE TO RESPOND, WHICH NECESSITATED THIS MOTION. THE \$150 SANCTION MAY BE ADDED TO THE JUDGMENT IF PLAINTIFF IS ABLE TO OBTAIN ONE OR IT MAY BE ENFORCED SEPARATELY.**

**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. PC20190309 CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES**

**Order of Examination**

Application for an Order of Examination was filed on December 18, 2023. There does not appear to be any proof of service of notice of the hearing on file with the court.

Code of Civil Procedure § 708.110(d) requires personal service of the application and order for examination at least ten days in advance of the scheduled examination:

The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service shall be made in the manner specified in Section 415.10. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court.

**TENTATIVE RULING #2: THE MATTER IS REMOVED FROM CALENDAR FOR FAILURE TO COMPLY WITH SERVICE OF PROCESS REQUIREMENTS.**

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**3. 23CV2065 JENNINGS v. PEARSON**

**Compromise of Minor's Claim**

On November 22, 2023, David Jennings, the father of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on November 28, 2023.

\* \* \*

This is a Petition to compromise a minor's claim. The petition states the minor sustained head and back injuries and post-traumatic stress resulting from an auto accident in 2022. A copy of the accident investigation report was filed with the petition, as required by Local Rule 7.10.12A(4). Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$9,000.

The petition states the minor incurred \$2,533.84 in medical expenses that would be deducted from the settlement. Copies of invoices for 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 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 \$2,750.00, which represents 31% 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 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The minor's attorney also requests reimbursement for costs in the amount of \$488.30.

With respect to the \$3,227.86 due to the minor, the Petition requests that they be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

**TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, IN DEPARTMENT NINE.**

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**4. 23CV2090 JENNINGS v. PEARSON**

**Compromise of Minor's Claim**

On December 4, 2023, David Jennings, the father of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on December 4, 2023.

\* \* \*

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

The Petition states the minor incurred \$3,356.01 in medical expenses that would be deducted from the settlement. Copies of invoices for 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 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 \$4,000.00, 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. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The minor's attorney also requests reimbursement for costs in the amount of \$488.50.

With respect to the \$4,155.49 due to the minor, the Petition requests that they be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

**TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, IN DEPARTMENT NINE.**

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**5. PC20210396 ESTATE OF BRETT SHANNON v. APPLE MOUNTAIN, L.P.**

**Leave to File Amended Complaint**

On November 9, 2023, Plaintiff filed a motion for leave to file a Second Amended Complaint in this action, which arose when a golf cart went off the path and through a guardrail on Defendant's property, killing one of the occupants of the cart and seriously injuring the other.

The original Complaint was filed on July 26, 2021, and included four causes of action: (1) negligence (wrongful death and survival action), (2) negligence (bodily injury), (3) product liability (negligence), (4) product liability (breach of warranties). The first two causes of action included claims for punitive damages. Defendant objected to the inclusion of punitive damages in the original Complaint and so Plaintiff agreed to file a First Amended Complaint that deleted the punitive damages claims until pending investigation and discovery which might reveal sufficient factual grounds to support punitive damages claims.

The First Amended Complaint was filed on November 30, 2021, with four causes of action: (1) premises liability (wrongful death and survival action), (2) negligence (bodily injury), (3) product liability (negligence) and (4) product liability (breach of warranties); the First Amended Complaint did not include the punitive damages claims.

Following investigation and discovery, Plaintiffs felt there was sufficient basis to include punitive damages claims in the case.

The Second Amended Complaint proposes five causes of action: (1) premises liability (wrongful death, negligence), (2) premises liability (survivorship action including punitive damages, negligence), (3) premises liability (bodily injury including punitive damages, negligence), (4) product liability (negligence) and (5) product liability (breach of warranty). Plaintiffs seek to split the wrongful death and survivorship claims into two separate causes of action as required by law; and to add punitive damages into the survivorship and bodily injury cause of actions only based on the new facts and circumstances discovered through formal and informal discovery. Although the parties met and conferred on this issue, they did not come to agreement and Defendant continues to object to the inclusion of punitive damages claims in the proposed Second Amended Complaint.

The newly ascertained facts and discovered evidence that Plaintiffs claim as support for the amendment of the Complaint is that Defendants were aware of the dangerous condition of its bridge railings and the risk of death or serious bodily injury which they posed to customers before the fatal incident that gave rise to this lawsuit, and that although the Defendant was aware of the dangerous condition of its bridge railings and the risk of serious bodily injury or



death they posed to customers, Defendant took no action to remedy, repair, or adequately warn customers of the danger and hazard.

The statutes that underlie Plaintiff's motion are Code of Civil Procedure §§ 473, 576 and Civil Code § 3294(a).

Code of Civil Procedure §§ 473(a)(1) provides:

The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Code of Civil Procedure 576 allows "[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order."

Civil Code § 3294(a) authorizes claims for punitive damages, as follows:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Defendant raises multiple arguments in opposition to Plaintiff's motion. Principally, Defendant raises the question of whether the decedent's cause of action can pass to Plaintiffs, who are limited in a survival action to recovering for "the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement." Code Civil Procedure § 377.34.

Defendant cites the holding in the case of Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757 (1981) that "[p]unitive damages are . . . recoverable in an action under Probate Code section 573<sup>1</sup> by the personal representative of the decedent's estate if the decedent survived the accident, however briefly, or if the property of the decedent was damaged or lost before death." Grimshaw v. Ford Motor Co., at 829. Defendant argues that leave to amend should be denied because, based on the evidence that the parties have developed through investigation and

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<sup>1</sup> Later codified as Cal. Civ. Proc. Code § 377.20.

discovery, that the Plaintiff cannot possibly prove that the decedent survived long enough to have provided the basis for an award of punitive damages.

The parties have exchanged extensive arguments and competing declarations to establish to an evidentiary certainty that either the decedent died instantaneously or lived long enough to provide the basis for a punitive damages claim. The parties have filed expert declarations, quoted excerpts of multiple depositions and requested rulings on their objections to the conflicting evidence.

This is a motion for leave to amend the Complaint. “It is well established that leave to amend a complaint is entrusted to the sound discretion of the trial court, and that the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse of discretion.’ (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 909, 285 Cal.Rptr.3d 737)”. N. Coast Vill. Condo. Ass'n v. Phillips, 94 Cal. App. 5th 866, 881 (2023). “The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.’ (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428, 109 Cal.Rptr.3d 647.)” City of Torrance v. S. California Edison Co., 61 Cal. App. 5th 1071, 1091 (2021). The principal reason justification for denial of leave to amend is if there is prejudice to the other party, such as “delay in trial, loss of critical evidence, or added costs of preparation.” Bidari v. Kelk, 90 Cal. App. 5th 1152, 1173 (2023). In this case the Defendant had notice of the potential for punitive damages claims from the filing of the original Complaint and has been engaged in the discussion of the basis for those claims with Plaintiff’s counsel ever since. Defendant has demonstrated in its opposition to this motion that it is well-prepared to argue against the imposition of punitive damages with extensive support for its arguments that it has compiled through discovery.

Another reason to deny leave to amend is if the amendment would be futile, as Defendant argues here. In this case, the question depends on a highly factual issue regarding the timing of decedent’s death. This is distinct from the cases in which leave to amend was denied on the basis of futility. For example, in Foroudi v. Aerospace Corp., 57 Cal. App. 5th 992 (2020) leave to amend was denied because the Plaintiff had failed to exhaust his administrative remedies, which was a complete bar to his claims as a matter of law. In Komorsky v. Farmers Ins. Exch., 33 Cal. App. 5th 960 (2019) it was undisputed that the Plaintiffs claims were not within the coverage provided by the Defendant’s insurance policy. In Royalty Carpet Mills, Inc. v. City of Irvine, 125 Cal. App. 4th 1110 (2005) amendment of the pleadings could not have altered the application of the statute of limitations to bar the claim. The question of futility is not an opening for the court to litigate the factual merits of the case at the pleading stage.

The court finds that it is consistent with strong public policy and the interests of justice to allow Plaintiff to file the Second Amended Complaint.

**TENTATIVE RULING #5: PLAINTIFF'S MOTION FOR LEAVE TO FILE THE SECOND AMENDED COMPLAINT 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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**6. 21CV0106 TREJO v. RESCUE ELECTRIC CORP.**

**Final Approval of Settlement**

This motion for final approval of the settlement of this Private Attorneys General Act (“PAGA”) class action lawsuit is unopposed.

At a hearing on October 13, 2023, the court issued an Order Granting Preliminary Approval of a Class Action Settlement and leave to file Second Amended Complaint. That Order includes the following:

1. The court granted preliminary approval of the settlement and found it to be fair, adequate, and reasonable to the class.
2. The court found that the settlement falls within the range of reasonableness and appears presumptively valid, subject to any objections that may be raised at the final hearing.
3. The court approved, as to form and content, the Notice of Settlement of Class and Representative Action (“Notice”).
4. The court directed the Notice to be mailed to the settlement class members in accordance with a schedule specified in the Order.
5. The court ordered that the settlement class was preliminarily certified for settlement purposes.
6. The court approved and appointed attorneys Daniel F. Gaines and Alex P. Katofsky as class counsel and granted a preliminary award of attorney’s fees of up to 35% (\$484,750) and documented litigation costs up to \$15,000, subject to final approval by the court following a further motion by class counsel.
7. The court approved and appointed Leonides Trejo as the class representative and granted preliminary approval to a proposed class/PAGA representative enhancement payment in an amount not to exceed \$15,000.
8. The court granted preliminary approval of the PAGA payment of \$50,000 as the PAGA settlement amount, with \$37,500 to be paid to the Labor Workforce Development Agency, and \$12,500 (25%) to be paid to class members employed by Defendant during the PAGA period.
9. The court approved Phoenix Settlement Administration as the Settlement Administrator and granted preliminary approval of the payment of fees and other charges of the Settlement Administrator in an amount not to exceed \$20,000.

On January 17, 2024, Plaintiffs filed an unopposed motion for final approval of the class and PAGA action settlement. A copy of the proposed settlement agreement is attached to the Declaration of Daniel F. Gaines, dated January 16, 2024, as Exhibit B.

The Declaration of Jarrod Salinas, dated January 6, 2024, on behalf of Phoenix Settlement Administrators, (“Salinas Declaration”) which served as the court-appointed Class Action

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Settlement Administrator for the case, states that 1,780 individuals were included as Class Members in the action. The Notice of Class and Representative Action was successfully mailed to all but 30 class members, for whom no address could be ascertained despite diligent investigation. Salinas Declaration, ¶¶2-7. No requests for exclusion, notices of objection or workweek disputes were received from the class members. Salinas Declaration, ¶¶8-10.

After deductions from the gross settlement amount of \$1,385,000.000 (attorney's fees in the amount of \$484,750.00; costs in the amount of \$9,548.09; enhanced payment to the named Plaintiff (\$15,000) in addition to the PAGA amount (\$50,000) and the requested settlement administration costs (\$18,750)), a net settlement amount of \$806,951.91 remains to pay settlement class members. Salinas Declaration, ¶12.

Of the PAGA payments, \$37,500 (75%) is to be paid to the Labor Workforce Development Agency, and \$12,500 (25%) is to be paid to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA period. Salinas Declaration, ¶14.

The highest individual settlement share to be paid to non-exempt class members is \$1,346.70; the lowest individual settlement share to be paid to non-exempt class members is \$5.30, while the average individual settlement share to be paid to non-exempt class members is approximately \$444.45. Salinas Declaration, ¶13. Non-exempt class members have worked a collective total of 146,111 work weeks during the class period, with each work week valued at approximately \$5.30. Salinas Declaration, ¶11.

The highest individual settlement share to be paid to exempt class members is \$1,666.39; the lowest individual settlement share to be paid to exempt class members is \$39.36, while the average individual settlement share to be paid to non-exempt class members is approximately \$849.42. Salinas Declaration, ¶13. Non-exempt class members have worked a collective total of 4,920 work weeks during the class period, with each work week valued at approximately \$6.56. Salinas Declaration, ¶11. Defendant has agreed to fund employer-side taxes due separately and apart from the gross settlement amount. Salinas Declaration, ¶15.

Named Plaintiff Leonides Trejo submitted a Declaration, dated January 10, 2024, ("Trejo Declaration") stating that he has been actively involved in the case, and has spent approximately 35 hours assisting the attorneys with the preparation of the case, and approximately 12.5 hours gathering organizing, and reviewing documents for the case. Trejo Declaration ¶¶6-9. He declares that he expects reputational harm to result from the case, including difficulty obtaining future employment. Trejo Declaration, ¶10. He further declares that he does not believe that he has any conflict with the other class members. Trejo Declaration, ¶11.

Court approval of a class action settlement is governed by California Rules of Court, Rule 3.3769, as follows: a

(a) Court approval after hearing

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) Attorney's fees

Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) Preliminary approval of settlement

Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) Order certifying provisional settlement class

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(d) Order for final approval hearing

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) Notice to class of final approval hearing

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

(e) Conduct of final approval hearing

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) Judgment

If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.

It appears that the requirements for court approval pursuant to California Rules of Court, Rule 3.3769 have been satisfied by the documents on file with the court. However, Rule 3.3769(e) requires the court to conduct an inquiry into the fairness of the proposed settlement and allow for any class members to express any objection during the final approval hearing. Accordingly, the parties are required to appear.

**TENTATIVE RULING #6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, IN DEPARTMENT NINE.**

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

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

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

**7. 23CV1110 WINN v. CHARITABLE SOLUTIONS, LLC**

**Motion to Expunge Lis Pendens**

Plaintiff has filed a Second Amended Complaint that includes causes of action for (1) Declaratory Relief, (2) Cancellation of Instrument – Civil Code § 3412 and (3) Breach of Contract. Plaintiff seeks to cancel the instruments conveying certain real property to the most recent buyers and seeks specific performance of the purchase and sale agreement that did not result in conveyance of the property to her for various reasons discussed below.

In pursuit of these claims, Plaintiff caused a lis pendens to be filed as to the real property, and Defendants Yes 2 Ventures, Inc. and Safari Wineries, Inc. (“Defendants”), who acquired the real property in two transactions evidenced by recorded Grant Deeds, dated July 21, 2023, now seek to have that lis pendens expunged, and for an award of reasonable attorney’s fees.

The purpose of a lis pendens is merely to furnish a means of notifying all persons of the pendency of an action and thereby to bind any person who may acquire an interest in property, subsequent to the institution of the action, by any judgment which may be secured in the action affecting the property.” (*Patten-Blinn Lbr. Co. v. Francis*, 166 Cal.App.2d 196, 199-200 [333 P.2d 255], quoting from *Lee v. Silva*, 197 Cal. 364, 373 [240 P. 1015] . . .

*Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 325, 75 Cal. Rptr. 56 (Ct. App. 1969)

Code of Civil Procedure §§ 405.30-405.39 set forth the procedures for expungement of lis pendens. In particular the following provisions are relevant to this case:

At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice. . . . The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice. The claimant shall have the burden of proof under Sections 405.31 and 405.32.

Code of Civil Procedure § 405.30.

In proceedings under this chapter, the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim. The court shall not order an undertaking to be given as a condition of expunging the notice if the court finds the claimant has not established the probable validity of the real property claim.

Code of Civil Procedure § 405.32.

The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney’s fees and costs of making or opposing the motion unless the court



finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Code of Civil Procedure § 405.38.

Pursuant to the applicable Code sections, the court must determine the probable validity of Plaintiff's claims. There are additional grounds from expunging a lis pendens if the court finds that the Plaintiff's claims are not "real property claims". However, this case turns on the validity of an alleged real property purchase agreement and the consequences that flow from that agreement. Accordingly, the court finds that the Plaintiff's claims are real property claims, and the Defendant's motion depends on the probability, based on the preponderance of the evidence, of whether the claims are valid. Code of Civil Procedure § 405.32.

Plaintiff claims an interest in a Vacant Land Purchase Agreement executed by buyer Matthew Priess on December 10, 2016 (2016 Agreement), regarding which Matthew Priess subsequently executed a one-page instrument purporting to assign his interest in the 2016 Agreement to Plaintiff on May 30, 2017. See Declaration of Madeleine Winn, dated January 4, 2024, ¶¶2-3, Exhibits 1 and 2 ("Winn Declaration").

The seller of the real property, Carl Ross, passed away in 2020 and Defendant Safari Ross became the trustee of the Carl Ross Trust ("Trust"), which held title to his estate. The Trust conveyed the property to Charitable Solutions, LLC, which in turn conveyed the property to Safari Estates Vineyard, LLC. Subsequently, title to portions of the property were conveyed in separate transactions to the two Defendants who bring this motion in July, 2023.

#### Validity of the 2016 Agreement

Plaintiff is not sure whether she is in possession of an original of the 2016 Agreement, although she has a vague memory of having received by mail at some point. Declaration of Michael Murphy, dated December 13, 2023, ("Murphy Declaration"), Exhibit E, pages 16:21-18:4.

Plaintiff has conceded that she did not then and has not since been in possession of the funds necessary to acquire the property. Murphy Declaration at pages 85:7-9, 91:20-23, 252:22-253:12. Instead she was contemplating producing the funds for purchase by selling properties that she had not yet paid for through assignment of a contractual interest in the unrealized transaction to purchase the same properties. *Id.* at pages 84:22-85:9, 87:15-90:21. Plaintiff anticipated generating millions of dollars to pay for the real property by assigning a contractual opportunity to purchase this property that she didn't yet own, notwithstanding her own admission that at the time "the property was unsaleable" and required "a lot of work to put it back in condition." *Id.* at pages 91: 20-92:20. According to her own testimony, Plaintiff's

successful performance of the 2016 Agreement depended on a series of contingencies involving unidentified third parties who might hypothetically be induced to pay for an unrealized contractual right in a deficient property.

Defendants point out that 2016 Agreement expired by its own terms when it was not closed within ten days of buyer's receipt of the title report. Winn Declaration, Exhibit 1, Section 1(D). Plaintiff admits that she did receive a title report as of May 30, 2017 but that no one ever sent her a Notice to Perform under Section 18.C, in the intervening six years and so the 2016 Agreement continues in effect. Section 18.C contemplates return of buyer's deposit after opening escrow. Plaintiff has not alleged that she made any deposit or opened escrow; she was apparently still discussing defects in the property at the time Carl Ross died and the property negotiations ceased.

#### Whether Plaintiff was an assignee of the 2016 Agreement

The Vacant Land Purchase Agreement on which all of Plaintiffs claims depend, states in Section 2(N) that "the addition [illegible] or substitution of any person or entity under this Agreement or to title prior to Close of Escrow shall require Seller's written consent." Plaintiff admits that the 2016 Agreement is not assignable without the seller's written consent in her responses to Requests for Admissions propounded by Defendant Safari Ross, Set 2, Response No. 13.

Plaintiff did not communicate the existence of the assignment to the seller or obtain the seller's assent to the assignment. Murphy Declaration at pages 57:19-58:25, 72:16-19.

Plaintiff can produce no documentation of an exchange of consideration for the assignment, other than her testimony that she had made a verbal promise to "probably" gift him one of the lots she was proposing to purchase, and that she might give him some future work. Murphy Declaration at pages 74:22-76:15.

#### Whether Defendants are Bona Fide Purchasers

Plaintiff claims the Defendants are bona fide purchasers who had notice of the pending acquisition as described in the 2016 Agreement. Winn Declaration, ¶19. In support of this assertion, Plaintiff request the court to take judicial notice of the Notice of Information filed by Safari Vineyard Estates, LLC, presumably to establish the fact that Dan Mincher, the individual to whom she communicated her claim to purchase the property during the most recent transactions to transfer title, is a corporate agent for that company, such that the company would be on notice of communications made to Mr. Mincher. Plaintiff's request for judicial notice is granted. Evidence Code § 452(c).

However, when she contacted Mr. Mincher to inform him of her assertion that she had a prior right to purchase the property she never sent him any documentation of her claim, not did she share key details about the contract that she claimed would prevent the sale of the property in her telephonic communications. Murphy Declaration, Exhibit E, at pages 134:22-135:19, 138:25-144:25. *See also*, Declaration of Daniel Mincher, dated December 14, 2023, (“Mincher Declaration”) ¶¶4, 5, stating that Plaintiff had telephoned Mr. Mincher in 2015 and claimed to have a contract that she refused to provide to him and the existence of which had never been mentioned by the seller, and that Plaintiff had called again seven years later and claimed to be the owner of the property without providing any evidence to substantiate that claim.

The only written communication that Plaintiff sent to Mr. Mincher was an email in which she detailed a long list of defects with the property, (Mincher Declaration Exhibit C) which undermines Plaintiff’s other claims that not only was she ready and willing to acquire the problematic property, but that she could fund it with proceeds from assignments to unidentified third parties of her unperfected interest in parcels that suffered from a long list of defects, including illegal roads and easements, lack of maintenance, unpermitted wells, illegal commercial agricultural operations, unpaid HOA fees and squatting sex offenders.

Having read and considered the evidence submitted in support of, and in opposition to the motion, the court finds that the Plaintiff has not established by a preponderance of the evidence the probable validity of the real property claim. The motion to expunge the list pendens is granted.

#### Attorney’s Fees

Defendant requests an award of attorney’s fees incurred in maintaining this motion in the amount of \$57,235.24.

The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney’s fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney’s fees and costs unjust.

Code of Civil Procedure, § 405.38.

The court finds that the award of attorney’s fees is justified in this case, as the court does not find that Plaintiff acted with substantial justification or that other circumstances would make the imposition of a costs and fees award unjust. The court, however, cannot grant the full amount as requested by Defendant, as set forth below. Defendant requests 15 hours of attorney time to draft a reply, yet not reply was drafted upon review of the record. As such, the court declines to include those fees, aside from 1.5 hours to review the pleadings filed by Plaintiff. Defendant also requests 3 hours for preparation and attendance at the hearing as well as \$800 in costs to travel to Cameron Park to attend the hearing. The court finds the costs for the hearing to be

speculative at this time, but the court will augment its order as necessary if there is oral argument on the motion. The court further finds that additional time for preparation for the hearing is duplicative of time Defendant's attorney would have spent preparing the pleadings (addressed below) and reviewing Plaintiff's filings. Regarding the travel costs, the court finds the Defendant's counsel reasonably could appear at the hearing remotely and therefore denies the travel costs as unreasonable under the circumstances. The court finds that the costs to travel to the deposition of \$1,195.39 are necessary and reasonable as is the filing fee of \$60. The court finds that costs for the transcript are reasonable; however, the court finds insufficient information has been provided for the need for a priority request costing \$2,043.75. Therefore, the court reduces the allowable transcript costs to \$4,273.10. As to the time to research and draft the motion and declarations, the court reduces the allowable hours to 25 hours, based on the court's own assessment of the amount of reasonable time to conduct these actions, insufficient information to assess the time it took for Defendant's counsel to undertake the tasks noted in counsel's declaration. Similarly, regarding the time for the deposition, the court reduces the chargeable time to 16 hours, finding insufficient information to support the number of hours sought.

The court finds that the attorney's billing rate is \$655 is reasonable under the circumstances and given the experience of counsel. In total, the court finds that the reasonable hours the attorney spent on this motion (not including any time that may be added for the hearing itself) is 42.5 hours, which multiplied by \$655 results in an attorney's fee award of \$27,837.50. The total costs awarded are \$5,528.49.

The court orders Plaintiff to pay Defendant \$33,365.99 for attorney's fees and costs incurred for the filing of this motion. The court reserves jurisdiction to augment the award if additional attorney time is spent at the January 26, 2024 hearing.

**TENTATIVE RULING #7: DEFENDANTS' MOTION TO EXPUNGE THE LIS PENDENS IS GRANTED. THE COURT ORDERS PLAINTIFF TO PAY DEFENDANT \$33,365.99 FOR ATTORNEY'S FEES AND COSTS INCURRED FOR THE FILING OF THIS MOTION. THE COURT RESERVES JURISDICTION TO AUGMENT THE AWARD IF ADDITIONAL ATTORNEY TIME IS SPENT AT THE JANUARY 26, 2024 HEARING.**

**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. 23CV2089 MATTER OF SHIRLEY A. BARBERA**

**Compromise of Minor's Claim**

This is a petition to compromise a claim of a person with a disability. This settlement results from Shirley Barbera's husband's wrongful death action in San Francisco Superior Court (Case No. CGC-11-275838).

Petitioner, who is Shirley Barbera's daughter, requests the court authorize a compromise of the claim in the gross amount of \$91,277.34. No other fees or costs are proposed to be deducted from that settlement amount.

The San Francisco Superior Court's Order, dated May 3, 2023, states that "Funds allocated to the Estate of Mario Barbera and/or to Shirley Barbera as wrongful death heir, are to be held until such time as an additional order is obtained pursuant to a Petition to Compromise Claim of a Disabled Person." The funds are held by Brayton Purcell, LLP, the law firm that represented Plaintiffs in the wrongful death case. Petition, Attachment 3D.

Petitioner, daughter of Shirley Barbera, was appointed guardian ad litem of Shirley Barbera for the purposes of the wrongful death action on October 25, 2022, based on declarations by medical professionals that Shirley Barbera was not capable of managing her own financial or medical affairs. Petition, Attachment 3C.

The Petition requests the court to adopt the following language in the Proposed Order, paragraph 8(b)(2):

Shirley A. Barbera's net settlement portion to be released and payable to the Mario and Shirley Barbera Living Trust. Petitioner [who is] claimant Shirley A. Barbera's trustee/attorney-in-fact/agent, shall deposit the net settlement funds into the existing Mario and Shirley Barbera Living Trust FDIC bank account. Settlement funds shall be managed and overseen on claimant's behalf as outlined in the Mario and Shirley Barbera Living Trust, dated 09/22/2015.

**TENTATIVE RULING #8: ABSENT OBJECTION THE PETITION IS APPROVED AS REQUESTED.**

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

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**COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

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

**9. 22CV0225 PEREZ v. AZEVEDO**

**Leave to Amend Complaint**

Plaintiff filed the First Amended Complaint on September 6, 2022, on Judicial Council Form PLD-PI-001, prior to the filing of Defendant's Answer, and included causes of action for "motor vehicle, and "general negligence" in Paragraph 10 of the Judicial Council Form. The damages claim in the original Complaint were for compensatory damages according to proof. The proposed amended Complaint would add a cause of action for "intentional tort" and a claim for punitive damages.

According to the Declaration of Plaintiff's counsel, Roseann Torres, dated October 31, 2023, new information was discovered during depositions that supports punitive damages claim. Further, the Traffic Incident Report indicates that Defendant was driving at an unsafe speed in hazardous winter conditions, and was taken into custody at the scene for a violation of Vehicle Code 23153(a), felony DUI with injury.

The motion is unopposed.

The statutes that underlie Plaintiff's motion are Code of Civil Procedure §§ 473, 576 and Civil Code § 3294(a).

Code of Civil Procedure §§ 473(a)(1) provides:

The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Code of Civil Procedure 576 allows "[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order."

Civil Code § 3294(a) authorizes claims for punitive damages, as follows:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

"It is well established that leave to amend a complaint is entrusted to the sound discretion of the trial court, and that the exercise of that discretion will not be disturbed on



appeal absent a clear showing of abuse of discretion.’ (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 909, 285 Cal.Rptr.3d 737)”. *N. Coast Vill. Condo. Ass'n v. Phillips*, 94 Cal. App. 5th 866, 881 (2023). “The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.’ (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428, 109 Cal.Rptr.3d 647.)” *City of Torrance v. S. California Edison Co.*, 61 Cal. App. 5th 1071, 1091 (2021). The principal reason justification for denial of leave to amend is if there is prejudice to the other party, such as “delay in trial, loss of critical evidence, or added costs of preparation.” *Bidari v. Kelk*, 90 Cal. App. 5th 1152, 1173 (2023).

Plaintiff asserts that the amendment will not prejudice Defendant because the new facts are known to Defendant and the proposed amendment does not add any new causes of action. However, the court notes that the First Amended Complaint does not include a cause of action for “intentional tort”, whereas the proposed Second Amended Complaint does check the box marked “Intentional Tort” in Paragraph 10 of the Judicial Council Form.

While the court agrees that there are adequate grounds to grant the motion for leave to amend the Complaint to add a claim of punitive damages for injuries caused while driving under the influence, *Taylor v. Superior Court* 24 Cal.3d 890, (1979), it appears that the addition of a cause of action for “intentional tort” may be unintended, given that no reference to this addition is included in the documents filed in support of the Plaintiff’s motion.

Appearances are required to explain whether or not the addition of an additional cause of action for an intentional tort is also requested in Plaintiff’s motion.

**TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, 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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**AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**10. 23CV1481 JENNINGS v. PEARSON**

**Compromise of Minor's Claim**

This matter was originally scheduled for hearing on October 13, 2023, but no parties appeared. The court identified various items missing from the application that are required by the Local Rules. An amended Petition was filed on November 22, 2023.

On August 16, 2023, the mother of the minor who is the subject of this Petition for Compromise of a Minor's Claim filed an ex parte application and Order to be appointed guardian ad litem for the purpose of this proceeding. The Order has not yet been signed.

\* \* \*

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

The petition states the minor incurred \$3,713.71 in medical expenses that would be deducted from the settlement. Copies of invoices for 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 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<sup>2</sup>, which represents 31% 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 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The minor's attorney also requests reimbursement for costs in the amount of \$489.20.

With respect to the \$4,047.09 due to the minor [see footnote 1 re: \$250 amount added to \$3,797.09 amount stated in the Petition], the Petition requests that these funds be deposited into a single-premium deferred annuity with Wells Fargo, subject to withdrawal with court

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<sup>2</sup> The Petition form states that \$4,000 of attorney's fees will be paid, but the attorney's declaration says that a \$250 discount will be applied, for a total amount of \$3,750.

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authorization. See attachment 18(b)(3), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

**TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, IN DEPARTMENT NINE.**

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**11. 23CV0837 STATE FARM FIRE AND CAUSALTY CO. v. CURTIS INDUSTRIAL, INC.**

**Order of Examination**

A default judgment was entered on August 8, 2023, in the amount of \$9,830.90.

Defendant was personally served with notice of the Order of Examination hearing on December 12, 2023, and proof of service was filed with the court on December 26, 2023.

**TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, IN DEPARTMENT NINE.**

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

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

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

**12. 22CV0359 LVNV FUNDING LLC v. BEATTY**

**Motion to Deem Admitted Matters Specified in Requests for Admissions**

A Complaint alleging credit card debt allegedly owned by Defendant to Plaintiff was filed on February 25, 2022, and Defendant was personally served with the Summons and Complaint on April 3, 2022, at an address on Norman Way in Camino. Defendant's Denial of the Complaint does not list any address.

On August 29, 2022, Plaintiff filed a motion to deem Requests for Admission admitted, including a Declaration of Sarkis Karayan, dated August 24, 2022. The August, 2022 motion resulted in an Order from this court, dated October 7, 2022, deeming admitted the matters contained within the June 27, 2022 Request for Admissions.

On November 6, 2023, Plaintiff filed a Declaration identical to the Declaration dated August 24, 2022, again declaring that Plaintiff sent Defendant Requests for Admissions on June 27, 2022, and a meet and confer letter on August 8, 2022, to which Defendant has not responded. Declaration of Sarkis Karayan, dated November 3, 2023, Exhibits 1 and 2. Proof of service of notice of the hearing was sent to Defendant and was filed with the court on November 3, 2023. There is no opposition to the motion on file with the court.

Although Plaintiff has filed adequate support for its motion pursuant to Code of Civil Procedure § 2033.280, it appears that an identical motion was already granted by the court on October 7, 2022.

Further, if the motion has not already been granted, the court notes that the proof of service of this hearing was sent to Defendant at an address that is not the address at which she was served with the Summons and Complaint.

**TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, 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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**13. 23CV0924 LOANDEPOT.COM LLC v. VIAINAU**

**Order of Examination**

A judgment in favor of Plaintiff was entered on August 15, 2023 in the amount of \$79,691.74. Defendant did not appear at the prior Order of Examination hearing on November 17, 2023. At that hearing, the court found that service was properly completed on January 2, 2034. The court ordered that if Defendant does not appear at the next hearing a bench warrant will issue in the amount of \$2,500.

**TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, 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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**14. 23CV0669 NAME CHANGE OF BRAEDON SCHUETTE**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on May 5, 2023. The Petitioner did not appear at the hearings held on June 30, 2023, August 25, 2023, October 27, 2023, and December 1, 2023, which were continued due to the lack of proof of publication and a background check on file with the court.

Petitioner is required to appear and advise the court as to whether he intends to proceed with this Petition.

**TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, 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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**15. 23CV0120 NAME CHANGE OF KEYT**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on January 18, 2023. The Petitioner did not appear at the hearings held on March 24, 2023, May 5, 2023, June 23, 2023, October 20, 2023, and December 8, 2023, which were continued due to the lack of proof of publication on file with the court.

At the hearing on August 18, 2023, Petitioner did appear and was advised of the need to file proof of publication.

No proof of publication is on file with the court as required by Code of Civil Procedure § 1277(a).

Petitioner is required to appear and advise the court as to whether she intends to proceed with this Petition.

**TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 26, 2024, 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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**16. 23CV2114 NAME CHANGE OF QUESTO**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on December 4, 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).

**TENTATIVE RULING #16: THE HEARING ON THIS MATTER IS CONTINUED TO ALLOW PETITIONER TIME TO FILE PROOF OF PUBLICATION WITH THE COURT.**

**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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