**1. 23CV1751 WEBSTER v. WEBSTER**

**Discovery Sanctions**

On January 8, 2024, Plaintiff served a Request for Admissions (RFA") on both Defendants as part of discovery in this lawsuit. Responses to the RFA were due on February 12, 2024. Neither Defendant has responded to this discovery. Plaintiff has filed this motion seeking to have the matters specified in the RFA deemed admitted, and served notice of the motion on Defendants by mail on February 27, 2024.

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.

The motion is unopposed.

Plaintiff requests sanctions be awarded against Defendant Timothy Webster in the amount of $1,560 and against Defendant Megan Webster in the amount of $810 pursuant to Code of Civil Procedure § 2033.280(c). This includes the $60 filing fees for each motion and attorney's fees incurred in filing the motions. Plaintiff filed two declarations of Peter Vlautin, his counsel, in support of each motion and accompanying sanctions request, claiming attorney time

of 3.75 hours for Timothy Webster's motion and 2 hours for Megan Webster's motion. Given that the motions are substantially similar to one another and given that lack of complexity in the filings, the court reduces the number of hours to what the court finds to be reasonable under the circumstances. The court issues sanctions in the amount of $810 against Timothy Webster, which includes 2 hours of attorney time, and $435 against Megan Webster which includes 1 hour of attorney time.

**TENTATIVE RULING #1: DEFENDANT'S MOTIONS TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION ARE GRANTED. THE COURT ISSUES SANCTIONS IN THE AMOUNT OF $810 AGAINST DEFENDANT TIMOTHY WEBSTER AND $435 AGAINST DEFENDANT MEGAN WEBSTER. THE SANCTIONS AS TO EACH DEFENDANT ARE TO BE PAID TO PLAINTIFF BY MAY 24, 2024.**

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

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

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

**2. 24CV0463 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH v. EL DORADO COUNTY BOARD OF SUPERVISORS**

**Writ of Mandate**

**TENTATIVE RULING #2: THIS MATTER IS CONTINUED TO 8:31 A.M. ON FRIDAY, MAY 24, 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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**3. 23CV1839 DISCOVER BANK v. EDWARDS-NORFLEET**

**Complaint for Damages**

Plaintiff filed the Summons and Complaint on October 20, 2023. The matter falls within California Rules of Court, Rule 3,740 as a collections case for a credit card debt. Although the Statement of Venue filed by the Plaintiff includes a mailing address for the Defendant, there is no proof of service of the Summons and Complaint on file with the court.

California Rules of Court, Rule 3.740(d) requires a Complaint in a collections action to be served on all named Defendants, and "proofs of service on those defendants must be filed, or the plaintiff must obtain an order for publication of the summons, within 180 days after the filing of the complaint."

California Rules of Court, Rule 3.740(e) provides that "[i]f proofs of service on all defendants are not filed or the plaintiff has not obtained an order for publication of the summons within 180 days after the filing of the complaint, the court may issue an order to show cause why reasonable monetary sanctions should not be imposed."

At the hearing held on December 15, 2023, there were no appearances, and the court continued the matter to allow Plaintiff an opportunity to file a complaint proof of service of proof of publication. Nothing has been filed with the court since that hearing, and it has been more than 180 days since the filing of the Complaint.

**TENTATIVE RULING # 3: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 14, 2024, IN DEPARTMENT NINE, AT WHICH TIME PLAINTIFF IS ORDERED TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED, PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.740(E).**

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

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**4. 23CV0418 ETHICS OF LIBERTY, LLC v. STONEBARGER ET AL**

**Motion to Set Aside Judgment**

Defendant/Cross-Defendant Joshua Rodriguez moves to set aside a default judgment that was entered on June 15, 2023. Plaintiff argues that he was never properly served the Summons and Complaint in the action, and that he had no actual notice of the subsequent default judgment until January, 2024, six months after it was filed and served on June 15, 2023.

Counsel for Plaintiff has filed a Declaration stating that he had sent an email to Rodriguez on April 14, 2023, attaching the Summons, Complaint, Civil Case Cover Sheet and notice of Case Management Conference. See Declaration of Marc Guedenet, dated April 2, 2024, Exhibit A. Guedenet's Declaration references "a previously sent letter", but does not include any "affidavit of the person making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this chapter."

Rodriguez signed a Notice of Acknowledgement and Receipt (Judicial Council Form POS-015) on May 5, 2023, attesting that he had received the Complaint, Summons, Civil Case Cover Sheet and Notice of Case Assignment and Case Management Conference.[1]

Plaintiff opposes the motion to set aside the default because Rodriguez executed and returned and acknowledgement of receipt of the Summons and Complaint.

An Acknowledgement and Receipt of Summons is a form authorized for the purpose of service of summons by mail in Code of Civil Procedure § 415.30. The statute describes in detail the required content of that form, and provides that two copies of the form be included with the Summons being served along with a postage pre-paid envelope addressed to the sender of the Summons. "Service of a summons pursuant to this section is deemed complete on the date a written acknowledgment of receipt of summons is executed, if such acknowledgment thereafter is returned to the sender." Code of Civil procedure § 415.30(c).

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[1] Plaintiff filed a Request for Judicial Notice with respect to the Notice of Acknowledgement and Receipt executed by Rodriguez and the June 15, 2023, default judgment. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

Section 415.30, the statute that authorizes the use of the Acknowledgement and Receipt of Summons form to establish the service of process, describes the process necessary to accomplish the service of Summons by mail. That section describes the manner of mailing (by first class mail or airmail, postage pre-paid) and the contents of the mailed package (the Summons and Complaint, two copies of the Acknowledgement and Receipt of Summons form and a pre-paid, self-addressed envelope). Neither that section nor any other section of the Code of Civil Procedure authorizes service of a Summons and Complaint or establishing the fact of service of process by means of an Acknowledgement and Receipt of Summons form delivered by email. The Judicial Council form POS-015 utilized by Plaintiff to attempt service of process contains an express notice that it is being served pursuant to Section 415.30.

Code of Civil Procedure § 417.10(a) provides:

> If served under Section . . . 415.30, [proof that a summons was served on a person within this state shall be made] by the affidavit of the person making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this chapter. The affidavit shall recite or in other manner show the name of the person to whom a copy of the summons and of the complaint were delivered, and, if appropriate, his or her title or the capacity in which he or she is served, and that the notice required by Section 412.30 appeared on the copy of the summons served, if in fact it did appear.
>
> If service is made by mail pursuant to Section 415.30, proof of service shall include the acknowledgment of receipt of summons in the form provided by that section or other written acknowledgment of receipt of summons satisfactory to the court.

Plaintiff did not file a proof of service as to Defendant Rodriguez meeting the requirements of Code of Civil Procedure § 417.10, but instead filed only the Notice of Acknowledgement and Receipt form with the court.

Plaintiff does not attempt to argue that personal service was unsuccessfully attempted, or that it had any trouble locating Plaintiff to effectuate service. Plaintiff did personally serve Defendant Stonebarger in El Dorado Hills a few weeks later.

> " '[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction. [Citation.] ... [A] default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void.' " [Citations omitted]

Rios v. Singh, 65 Cal. App. 5th 871, 880 (2021); *see also* Ellard v. Conway, 94 Cal. App. 4th 540, 544 (2001); Dill v. Berquist Construction Co. 24 Cal.App.4th 1426 (1994); Calvert v. Al Binali, 29 Cal. App. 5th 954, 961 (2018).

> When a court lacks jurisdiction in a fundamental sense, such as lack of authority over the subject matter or the parties, an ensuing judgment is void. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660, 16 Cal.Rptr.3d 76, 93 P.3d 1020.) To establish personal jurisdiction, it is essential to comply with the statutory procedures for service of process. (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544, 114 Cal.Rptr.2d 399.) Accordingly, " 'a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void.' " (Ibid.) Whether the lack of jurisdiction appears on the face of the judgment roll, or is shown by extrinsic evidence for a judgment that appears valid on its face, "in either case the judgment is for all purposes a nullity—past, present and future." (*Morgan*, supra, 105 Cal.App.2d at p. 732, 234 P.2d 319.)

OC Interior Servs., LLC v. Nationstar Mortg., LLC, 7 Cal. App. 5th 1318, 1330–31 (2017).

> " 'A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.' " (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441, 29 Cal.Rptr.2d 746 (*Dill*); *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181, 114 Cal.Rptr.3d 619 ["This does not hinge on evidence: A void judgment's invalidity appears on the face of the record."].) In cases where there is no answer filed by the defendant, the judgment roll includes: "the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; ... (§ 670; *Dill, supra,* at p. 1441, 29 Cal.Rptr.2d 746 ["In a case in which the defendant does not answer the complaint, the judgment roll includes the proof of service."].)

Calvert v. Al Binali, 29 Cal. App. 5th 954, 960–61 (2018).

Given Plaintiff's admission of service by email, and the lack of a proof of service evidencing service of the Summons and Complaint on Rodriguez by any means authorized by statute, the court finds that Rodriguez has not been properly served, and as a result, the default judgment is set aside.

**TENTATIVE RULING #4:**

1. **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **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).**

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**5. 23CV0070 MANTLE GROUP, INC. v. MCLAFLIN**

**Demurrer**

Plaintiff's Amended Complaint ("Complaint"), filed on June 14, 2023, includes causes of action for breach of contract, specific performance, intentional interference with contractual relations, breach of implied duty of good faith and fair dealing, and fraud. Plaintiff seeks specific performance of an option contract contained within a lease agreement, and claims that Defendant fraudulently and in breach a its contract with Plaintiff, failed to honor Plaintiff's attempt to exercise the option.

Request for Judicial Notice

Defendant filed a request for judicial notice of the business records of the Secretary of State's Office regarding MGI's corporate status indicating suspension of MGI by the Secretary of State as of September 29, 2017, and by the Franchise Tax Board as of November 1, 2017, and the reinstatement of MGI by the Franchise Tax Board on May 11, 2022, and by the Secretary of State as of December 8, 2022.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). Evidence Code § 452(c) allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States."

A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, the parties' requests for judicial notice are granted.

Contract Causes of Action

On October 7, 2014, Plaintiff ("MGI") and Defendants McClaflin and Wilson entered into a lease agreement to lease certain real property from a term beginning October 1, 2014 through September 30, 2019. Complaint, ¶14. Payment for the lease term in the amount of $25,000 was due in two installments: $10,000 upon execution of the lease, and $15,000 on or before April 1, 2015. Complaint, ¶ 15, Exhibit 2, Section 3.1. The lease also contained an option to purchase. Complaint, ¶¶13, 16; Complaint Exhibit 2, Section 9. Written notice of MGI's intention to

exercise the purchase option was due on or before September 30, 2019. Complaint ¶17; Complaint, Exhibit 2, Section 9.1:

> 9.1 Lessee may exercise this option on or before September 30, 2019, provided Lessee is not then in default under this Lease, giving Lessor written notice of the exercise of the option.

On September 29, 2017, MGI's corporate status was suspended by the Secretary of State and remained suspended until November 14, 2022. Complaint ¶2. On November 1, 2017, MGI was suspended by the Franchise Tax Board, and remained suspended until May 11, 2022. Under Revenue and Taxation Code § 23302, this resulted in the suspension of the corporation's powers, rights and privileges; during that suspension period the corporation "shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension." Revenue and Taxation Code § 23302(d). The corporation was simultaneously prevented from exercising any "corporate powers, rights, and privileges" as a result of its suspension by the Secretary of State. Corporations Code § 2205.

MGI alleges in the Complaint that it exercised the purchase option on September 21, 2019, Complaint, ¶21, and that Defendants breached the lease by failing to sell the property to MGI. Complaint, ¶¶36-43. Instead, the property was sold to Defendant Pacific Power Partners. Complaint ¶13, 32. The Grant Deed of that sale was executed by McClaflin on May 19, 2021, and was recorded on May 27, 2021. Complaint, Exhibit 1.

<u>Contract Causes of Action</u>

There is no dispute that the lease agreement and the associated option to purchase agreement were validly executed by parties with legal capacity to enter into contracts. The key issue is whether MGI's suspended status at the time that it attempted to exercise the option to purchase affected the validity of its exercise of the option.

MGI's position relies heavily on the fact that it was a corporation in good standing with the capacity to enter into contracts at the time that it entered into the lease and purchase option agreements in October, 2014. MGI's opposition states:

> [MGI] remained in good standing years after the commencement of the period for performance. Additionally, with regard to [MGI's] ability to transfer real property, [MGI] would have likely established good standing by the time that the parties executed a real estate purchase agreement, but we can never know, because before that could happen, Defendant McClaflin breached her promises to [MGI], selling the Subject Property to a third party instead. . . . Plaintiff could have revived its status before the signing of any documents necessary to close escrow on its purchase of the Subject Property, under its purchase option agreement.

Plaintiff's Opposition to Defendant McClaflin's Demurrer to the First Amended Complaint at 10:28-11:5.

However, MGI's arguments ultimately fail because the purchase agreement that it seeks to enforce in this action would have been formed at the time of its exercise of the option, a time when, as a suspended corporation, it did not have contracting capacity. The nature of an option to purchase agreement was discussed in the case of Auslen v. Johnson, 118 Cal. App. 2d 319, (1953):

> [An option to purchase real estate] is a unilateral agreement. The optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. Upon the lapse of that time the matter is completely ended and the offer is withdrawn. If the offer be accepted upon the terms and in the time specified, then a bilateral contract arises . . . .

Auslen v. Johnson, 118 Cal. App. 2d 319, 321–22 (1953). See also, Erich v. Granoff, 109 Cal. App. 3d 920 (1980):

> An option may be viewed as a continuing, irrevocable offer to sell property to an optionee within the time constraints of the option contract and at the price set forth therein. It is, in other words, a unilateral contract under which the optionee, for consideration he has given, receives from the optionor the right and the power to create a contract of purchase during the life of the option. "An option is a contract, made for consideration, to keep an offer open for a prescribed period" (1 Witkin, Summary of Calif.Law, 8th ed., Contracts, Œ 216). An option is transformed into a contract of purchase and sale when there is an unconditional, unqualified acceptance by the optionee of the offer in harmony with the terms of the option and within the time span of the option contract.

Erich v. Granoff, 109 Cal. App. 3d at 927–28.

MGI distinguishes the case of Erb v. Flower, 248 Cal. App. 2d 499, (Ct. App. 1967). In the Erb case, the plaintiff was an assignee of a corporation whose corporate powers were suspended for a period from before the commencement of a contract that ran from November 1962 through October, 1964, and its corporate status was not reinstated until after the expiration of the term of the contract. Under the contract the suspended corporation was guaranteed orders of a certain quantity of product. However, because the defendant placed no orders for the product during the contract term the plaintiff sued for breach of contract. The corporate status was reinstated after the term of the contract had expired, such that "during the entire performance period of the contract the plaintiff's assignor was incapable of performing its obligations under the contract." Erb at 500 (emphasis in original). The trial court found that the defendant's repudiation of the contract was justified under those circumstances because of the

corporation's inability to perform during the contract term. The appellate court granted that the contract itself was valid, as it had been executed prior to the corporate suspension. However, it was unable to perform the contract during its term because of the suspension. Id. The appellate court affirmed the judgment, citing Vogue Creamery Co. v. Acme Ice Cream Co., 8 Cal. App. 2d 357 (1935):

> "*When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation, and cannot recover upon his offer of performance if he is not able and willing to perform according to the offer*." (Italics added; p. 359, citing Civ. Code, § 1495 and Dickey v. Kuhn, 106 Cal.App. 300 [289 P. 2422].)

Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967).

MGI argues that because "[h]ere, unlike the plaintiff in Erb, Plaintiff's corporate status was not suspended until years after the period for performance commenced." While it is true that MGI was a corporation in good standing at the time the lease and option were executed, at the time for performance, i.e. the time for exercising the option to create a new purchase contract, MGI's corporate powers, rights, and privileges were suspended by operation of law, rendering it "incapable of making a valid tender" of an option under the agreement. Erb v. Flower, 248 Cal. App. 2d 499, 501 (1967). This suspended status continued from approximately two years prior to the attempt to exercise the option to purchase, and extended until approximately three years after the deadline for exercising the option. The hypothetical possibility that MGI might have reinstated its corporate status in time to open escrow and make a payment under the option agreement does not affect McClaflin's legal rights to refuse the tender of the offer based on the corporation's status at the time the tender was made. MGI was equally able to rehabilitate its corporate status prior to exercising the option, or even in the period following and prior to the sale to Pacific two years later in 2021, but it did not.

In Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) a trial court renewed a judgment in favor of a corporation that was in good standing at the time of the judgment but had been suspended at the time that the corporation requested renewal of the judgment. The renewal of the judgment was overturned by the appellate court because of the application of Revenue and Taxation Code §§ 23301 and 23302, which disqualifies the corporation from "exercising any right, power or privilege" during a suspension period. The court held that "invocation of the benefits of California laws" is a right and privilege "reserved to those corporations which pay their franchise taxes in a timely fashion and remain in good standing with the California Secretary of State and taxing authorities." Timberline, 54 Cal. App. 4th 1361 at 1368. The court noted that the corporation "could have avoided this result by reviving itself

prior to filing its application to renew the judgment, or at any time before its 10-year life expired." Id. at 1369.

MGI distinguishes Timberline, Inc. v. Jaisinghani, 54 Cal. App. 4th 1361 (1997) because MGI did in fact revive its corporate standing on or around November 14, 2022, which "has been held to validate otherwise invalid prior action" citing Timberline at 1366. The passage cited by MGI is dicta, listing circumstances in which courts have considered whether corporate reinstatement could save a prior action that had been taken during a suspension period. See, Traub Co. v. Coffee Break Serv., Inc., 66 Cal. 2d 368, 425 P.2d 790 (1967) (a judgment in favor of a corporation that was in good standing when the action was filed but was suspended during the pendency of the litigation was not invalidated where the defendant did not raise the issue until after the time for appealing the judgment had expired and the judgment had become final); Diverco Constructors, Inc. v. Wilstein, 4 Cal. App. 3d 6 (1970) (a motion to dismiss litigation based on a party's suspended corporate status was groundless where the corporation revived its status before the motion to dismiss was filed); A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d 499 (1969) (suspended corporation that obtained a writ of attachment and revived its corporate status before the filing of a motion to discharge the writ was still entitled to enforce it); Duncan v. Sunset Agr. Mins., 273 Cal. App. 2d 489 (1969) (trial court's determination that suspended corporation had no standing to defend the action was overturned where the corporate status was revived before the deadline for filing a motion to vacate the judgment had expired). In each of the cases listed as exemplars of this principle in the Timberline dicta cited by MGI, the context was a judicial proceeding which favors judgment on the merits and disfavors pleas in abatement. A. E. Cook Co. v. K S Racing Enterprises, 274 Cal. App. 2d at 500 (1969). More importantly, each of those examples considers the timing of the revival of the corporation and whether it occurs within applicable deadlines. Those cases are distinguishable from the situation in this case because here the deadline for exercising the option had passed and the underlying lease and purchase option agreements had both expired when the corporate status was restored.

MGI also attempts to distinguish Damato v. Slevin, 214 Cal. App. 3d 668 (1989) in which the court of appeal upheld the trial court's grant of a summary judgment on the basis that a subsequent revival of corporate standing did not deprive the other party of its statutory right to treat the contract as voidable under the Revenue and Taxation Code.[2]

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[2] Revenue and Taxation Code § 23304.1(a): Every contract made in this state by a taxpayer during the time that the taxpayer's powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the request of any party to the contract other than the taxpayer were executed.

Given that MGI did not have the legal capacity to form a bilateral purchase contract by exercising the option while its corporate status was suspended, there was no contract to breach and the First Cause of Action must fail. The Second, Third and Fourth Causes of Action for specific performance, intentional interference with contractual relations and breach of implied duty of good faith and fair dealing also depend on the existence of a contract and similarly cannot withstand the challenge of a demurrer under these facts.

Fraud Cause of Action

Plaintiff alleges in the Fifth Cause of Action for fraud that the Lessor Defendants committed fraud because, MGI alleges, at the time the lease and option agreement were executed in 2014 they included the option as an inducement for MGI to enter the lease but had no intention on honoring the option if MGI elected to exercise it. Complaint, ¶¶75-77.

The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. Witkin, Summary 11th Torts § 890 (2023). A promise to do something necessarily implies the intention to perform, and where that intention is absent, there is an implied misrepresentation of fact, which is actionable fraud. Id. § 899.

> In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations] "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered."

Lazar v. Superior Ct., 12 Cal. 4th 631, 645 (1996).

In this case, the following allegations are made in support of the fraud cause of action:

• The option to purchase was a material inducement to enter into the lease and option agreement. Complaint, ¶16.

• McClaflin "continued to delay" MGI's efforts to exercise the option. Complaint, ¶ 22.

• "[F]or reasons unknown to Plaintiff, Defendants never completed the transaction." Complaint, ¶30.

• Plaintiff is informed and believes, and thereon alleges that Defendants McClaflin and Wilson knowingly and willfully conspired to defraud Plaintiff by utilizing the false pretense that Plaintiff would have the right to purchase the Subject Property. Complaint, ¶75.

• On information and belief, Defendants McClaflin and Wilson had no intention of performing this promise when it was made. Complaint, ¶77.

As stated in the Reeder case:

> These allegations are the very sort of general and conclusory allegations that are insufficient to state a fraud claim. For one thing, plaintiff has alleged no facts or circumstances suggesting defendants' intent not to perform the alleged promise when it was made. "It is insufficient to show an unkept but honest promise, or mere subsequent failure of performance." [Citations]. Plaintiff has alleged no facts or surrounding circumstances suggesting anything more.

Reeder v. Specialized Loan Servicing LLC, 52 Cal. App. 5th at 804.

The extent of the allegations on the issue of McClaflin's allegedly false promise is that McClaflin "continued to delay" the transaction, Complaint, ¶22; that Plaintiff doesn't know why McClaflin never completed the transaction, Complaint, ¶30; and that "on information and belief" Defendants willfully conspired to defraud Plaintiff on false pretenses with no intention of performing the promise. Complaint, ¶¶75, 77.

Counterbalancing these "general and conclusory" allegations on information and belief, is the undisputed fact that Plaintiff did not have the legal capacity to enter into a purchase agreement at all times that it attempted to exercise the option before and after the option expired. "When a vendor under an executory contract has rendered himself unable to perform he cannot complain of the vendee's repudiation"] . . . ." Damato v. Slevin, 214 Cal. App. 3d 668, 674 (1989).

This court previously found cause to grant terminating sanctions under Code of Civil Procedure § 128.7 as to another Defendant for claims made by Plaintiff that were without legal or evidentiary support based on Plaintiff's incapacity to enter into the contract that it is attempting to enforce through this action. These are essentially the same claims asserted against Defendant McClaflin. The identity of the Defendant does not alter the inevitable conclusion in this motion, that Plaintiff, by its own voluntary conduct, rendered itself legally incapable of entering into the contract it seeks to enforce.

**TENTATIVE RULING #5:**

**(1) DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
**(2) DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**

**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.**

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

**Motion for Summary Judgment/Summary Adjudication**

Plaintiff/Cross-Defendant City of Rocklin ("City") seeks a determination as to whether Defendant/Cross-Complainant Legacy Family Adventures ("LFA") anticipatorily repudiated the contracts at issue in this case, which would render a judgment in the City's favor on the City's Ninth Cause of Action for anticipatory repudiation, as well as on the remaining three causes of action in LFA's First Amended Cross-Complaint ("FACC") directed against City: 1) breach of contract, 2) breach of implied covenant of good faith and fair dealing and 3) recission. In short, City argues that LFA cannot claim that the City has breached any contract, nor can it claim a right of recission of any contract which has been anticipatorily repudiated by LFA.

The parties executed a Master Agreement in January, 2017 as the park was being designed and constructed, UMF No. 1, and that 2017 Master Agreement included an Operating Agreement intended to govern the operation of the park. The parties executed an Amended Operating Agreement in April, 2018 that was intended to govern the operation of the finished park once it opened for business, although the legal effect of that 2018 agreement (the "Amended Operating Agreement" or Agreement) remains in dispute in this case. UMF No. 2.

The Amended Operating Agreement called for payments by LFA to the City from the "Net Operating Revenue" from operation of the park, defined in the Agreement, Section 1.1.20 as "Gross Revenue less Cost of Goods Sold less Standard Operating Expenses." Section 9 of the Agreement called for the following "priority" in LFA's payment obligation to the City from Net Operating Revenue: first, a quarterly payment toward the "City's annual debt service"; second, an annual fixed amount toward future Capital Improvements in the park; third, a set amount to LFA; fourth, a set amount to the City, until the City's debt service for construction of the park was satisfied. Thereafter City and LFA would split all Net Operating Revenue after deductions for the annual Capital Improvement payment.

The amount of the payment due for the City's annual debt service was quantified in the Agreement as "up to" $542,000 (Agreement Section 9.1(a)(i)), an amount intended to represent "a sum equal to 25% of the City's annual debt service, up to Four Million Dollars, on the City's Original Investment in the Adventure Park Construction." Agreement, Section 9.1(a). The "City's Original Investment" is a defined in Section 1.3 of the Agreement, which provides that the amount of the "City's Original Investment" would be determined "upon completion of the Adventure Park," at which time "the actual cost of the work, the City's Original Investment will be determined and provided to LFA with a detailed breakdown of the costs."

There is nothing in the record that establishes the amount of the "City's Original Investment" or that any detailed breakdown of the costs of construction had been provided to

LFA such that the amount of payment due toward the annual debt service had been established. In fact, the May 22, 2018 Notice to Proceed ("Partial Opening Agreement") issued to LFA as City's authorization for LFA to open selected elements of the park to the public, expressly stated that LFA was required to accept the park "as is" with the understanding that construction was still ongoing, and in fact required LFA to indemnify the City and its construction contractors from "the potential dangerous condition posed by the Park due to or as a result of the ongoing construction activity within areas of the Park." Declaration Of David Busch, dated March 9, 2023, ¶16, Exhibit F.

The City's second motion for summary judgment/summary adjudication rests its entire argument on the October 2018 financial projections generated by LFA, titled "QPA Assumptions" stating that, based on certain assumptions of the amount of costs and revenues associated with operating the park, the Net Operating Revenue would not support quarterly payments of $542,000. Declaration of Sean Filippini, dated January 26, 2024, Exhibit I. The City asserts that this October 2018 financial projection by LFA amounts to anticipatory repudiation because the document showed that LFA would not be able to "meet its financial obligations to the City."

As discussed above, the clear terms of the Agreement provide a procedure for establishing and communicating an amount of debt service payment that would be due under the contract. The City's motion represents that LFA owed the City quarterly payments of $542,000, but does not point to any evidence that the debt service payment amount had been established and communicated to LFA as required by the Agreement. The City cannot represent that LFA communicated its intention in advance to refuse payment of an amount that had not yet been established.

Finally, City directs three additional arguments to paragraph 100(h) in the FACC, which alleges that the City breached its obligation "to act fairly and in good faith toward LFA by . . . "claiming anticipatory repudiation of the Master Agreement by LFA before ever delivering the Adventure Park contemplated by the Master Agreement[.]" On this point City first refers back to its argument that the October 2018 financial projections were in fact an anticipatory repudiation by LFA. The Undisputed Material Facts cited by the City on this point are in fact disputed by LFA and the court agrees that those financial projections did not amount to anticipatory repudiation of any contractual obligation of LFA.

Second, the City argues that "any such contention that the City improperly alleged an anticipatory repudiation in its complaint would be litigation privileged." The allegation in the FACC does not limit its scope to statements in the City's complaint. In its November 29, 2023 Order on the City's first motion for summary judgment, the court found that there are triable issues of material fact as to whether the alleged conduct occurred and whether it constitutes a breach of the covenant of good faith and fair dealing as alleged in paragraph 100(h) of the FACC.

Third, City argues, the court has already held that LFA was not entitled to demand that the park be designed and constructed in accordance with design specifications included in the 2017 Master Agreement, "and therefore, no breach claim can be premised on a park purportedly 'contemplated by the Master Agreement.'" However, the gravamen of the allegation in paragraph 100(h) of the FACC is the City's "claiming anticipatory repudiation of the Master Agreement by LFA" an allegation which in itself is not dependent on the descriptive and subordinate clause that follows to the effect that the park was not as described in the 2017 agreement. LFA's claims for breach of contract based on the difference between the original specifications and the as-built design of the park are contained elsewhere in the FACC and have addressed in the court's Orders resulting from first motion for summary judgment.

The court finds that the debt service payment amount that was owed under the parties' agreement is a triable issue of material fact that precludes summary judgment.

**TENTATIVE RULING #6: PLAINTIFF/CROSS-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION IS DENIED.**

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

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

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**7. 23CV1973 IN THE MATTER OF CYNTHIA LYMAN**

**Demurrer**

Defendant, trustee of the Ross and Rosalind Crosby Family Trust ("Trust") demurs to the Complaint, which was filed on November 13, 2023. The Complaint seeks enforcement of a promissory note dated March 15, 2015, which was allegedly entered into by decedent Ross Crosby, settlor of the Trust. (Complaint, Exhibit A.) Decedent died on November 6, 2022.

Request for Judicial Notice

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

Standard of Review

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)
>
> In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

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

Statute of Limitations

Defendant argues that the application of Code of Civil Procedure § 366.2 bars Plaintiff's claim, which was filed more than one year after decedent's death. The relevant portions of that statute provide:

> (a) If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.
>
> (b) The limitations period provided in this section for commencement of an action shall not be tolled or extended for any reason except as provided in any of the following, where applicable:
>
> * * *
>
> (2) Part 4 (commencing with Section 9000) of Division 7 of the Probate Code (creditor claims in administration of estates of decedents).
>
> (3) Part 8 (commencing with Section 19000) of Division 9 of the Probate Code (payment of claims, debts, and expenses from revocable trust of deceased settlor).
>
> * * *

Section 366.2(b)(2) references creditor claims in the administration of decedent's estates. Defendant argues that this provision does not apply to extend the statute of limitations because Plaintiff never filed a creditor claim against decedent's estate within the time limit for filing such a claim under Probate Code § 9100(c). However, Probate Code § 9100 applies to claims against a decedent's estate during probate administration, and there is nothing in the record that indicates that probate was initiated with respect to decedent's estate.[1]

Claims against a deceased settlor of a trust are governed by Probate Code §§ 19000, et seq. However, nothing in the record dictates application of those statutes, because there is nothing in the Complaint or of which the court may take judicial notice establishing that the

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[1] Probate Code § 9100 provides:

(a) A creditor shall file a claim before expiration of the later of the following times:

> (1) Four months after the date letters are first issued to a general personal representative.
>
> (2) Sixty days after the date notice of administration is mailed or personally delivered to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.

* * *

(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a "statute of limitations" includes Section 366.2 of the Code of Civil Procedure.

Trust or any part of it was revocable at the time of the settlor's death, see Probate Code §§ 18200, 19000(d)[2].

If the revocable nature of the Trust is such that Probate Code §§ 19000, et seq. might be applicable, it is not established by the Complaint or anything of which the court may take judicial notice as to whether the Defendant as trustee published notice to creditors pursuant to those statutes, which notice would trigger time limits for filing creditor claims against Trust assets. Probate Code § 19004. With no statutory notice to creditors in the record for the purpose of this demurrer, there is likewise no statutory time limit on the filing of creditor claims that is triggered by such notice. Accordingly, nothing in the record requires any extension of the statute of limitations pursuant to Code of Civil Procedure § 366.2(b)(2) and (b)(3).

There is no copy of the Trust in the record, so the court cannot rely on Plaintiff's assertion, which appears in the Declaration accompanying the memorandum of points and authorities but not in the Complaint or its attachments, that Plaintiff was entitled to any notice as a beneficiary of the Trust. It is not established by the record whether anything triggered the notice requirements in Probate Code § 16061.7, such as when any portion of the Trust becomes irrevocable or when there is a change of trustee of an irrevocable Trust. In fact, the attachments to the Complaint (Complaint, Exhibit B) establish that the settlor resigned as trustee in June, 2020 and the current trustee has been in place for more than two years before the settlor's death and up to the present, so no notice requirement related to a change of trustee would have been triggered by the settlor's death in November, 2022.

According to the Complaint (Complaint, Exhibit B), the Plaintiff communicated this claim to Defendant in his capacity as trustee of the Trust on February, 19, 2023, less than four months after the decedent died on November 6, 2022. On September 26, 2023, the trustee communicated an offer of "compromise and settlement." (Complaint, Exhibit B.) On October 24, 2023, Plaintiff's counsel rejected a settlement offer from the trustee and made a demand for payment no later than October 31, 2023. (Complaint, Exhibit B.) At that time, once payment had not been made in response to the demand, Plaintiff and her counsel still had several weeks to

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[2] "Trust" means a trust described in Section 18200, or, if a portion of a trust, that portion that remained subject to the power of revocation at the deceased settlor's death. Probate Code § 19000(d).

If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor. Probate Code § 18200.

file a Complaint within the applicable statute of limitations, but did not. There is no defect in notice by the trustee or pending creditor claim that would extend the statute of limitations.

**TENTATIVE RULING #7:**

**(1) DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
**(2) DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**

**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. 23CV0070 MANTLE GROUP, INC. v. MCLAFLIN**

**Motion for Protective Order**

**TENTATIVE RULING # 8: THE COURT HAVING SUSTAINED DEFENDANT'S DEMURRER TO THE COMPLAINT IN THIS ACTION WITHOUT LEAVE TO AMEND, THE MOTION FOR A PROTECTIVE ORDER IS MOOT.**

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

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**9. 24CV0051 NAME CHANGE OF FERRARINI-TOMMASI**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on January 11, 2024.

Proof of publication was filed on February 8, 2024**,** as required by Code of Civil Procedure § 1277(a).

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

At the hearing on March 22, 2024, the court continued the matter to allow time to file a background check.

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

**TENTATIVE RULING #9: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 17, 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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**10. 24CV0381 NAME CHANGE OF KISTLER-BEASLEY**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on February 29, 2024.

Proof of publication was filed on April 2, 2024**,** as required by Code of Civil Procedure § 1277(a).

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

**TENTATIVE RULING #10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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

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

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

**11. 24CV0099 NAME CHANGE OF RENO**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on January 19, 2024.

Proof of publication was filed on February 16, 2024**,** as required by Code of Civil Procedure § 1277(a).

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

**TENTATIVE RULING #11: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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

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**12. PC20210120 PEOPLE OF THE STATE OF CALIFORNIA v. KUNG**

**Trial Setting**

Notice to claimant of the hearing date was filed on March 11, 2024.

**TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 19, 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.**

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**13. PC20120295 CHOY ET AL v. RIBEIRO DEVELOPMENT, INC.**

**Order of Examination Hearing**

Proof of service of notice of the hearing date was filed with the court on April 2, 2024.

On April 2, 2024, Defendant Johnny Riberio filed a Notice of Appeal of the February 13, 2024 judgment awarding Defendants attorney's fees in the amount of $64,522.52.

**TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 19, 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.**

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**14. PCL20210332 PEOPLE OF THE STATE OF CALIFORNIA v. KELLY**

**Claim Opposing Forfeiture**

At the hearing on February 16, 2024 the parties indicated that a stipulation and judgment had been agreed to that was awaiting signature by the parties., and the court continued the matter. Notice was to be given by Mr. Fransham. There is no proof of service of notice in the court's file.

**TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 19, 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.**

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**15. 23CV0581 PEOPLE OF THE STATE OF CALIFORNIA v. $31,939.97 IN U.S. CURRENCY**

**Claim Opposing Forfeiture**

The unverified petition contends: $31,939.97 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

A proof of service was sent by registered mail to an interested party on April 14, 2023. On October 23, 2023, service of notice of this hearing was delivered to an interested party by U.S. mail and proof of service was filed with the court.

Proof of publication was filed with the court on July 5, 2023.

At the hearing on February 16, 2024, the court continued the matter; notice was waived at the hearing.

**TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 19, 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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