

October 10, 2025

Dept. 9

Tentative Rulings

1.	23CV1110	WINN v. CHARITABLE SOLUTIONS, LLC
Motion for Judgment on the Pleadings and to Dismiss		

Defendants Yes 2 Ventures, Inc. and Safari Wineries, Inc. (collectively "Moving Defendants") hereby move for judgment on the pleadings given that the Second Amended Complaint ("SAC") fails to state a claim against Moving Defendants or, alternatively, Moving Defendants will seek an order striking Plaintiff's SAC and entering a default against her, or, alternatively, a dismissal of this entire action. In this Motion, the Moving Defendants also seek to dismiss, with prejudice, the 31 Defendants named in the SAC on January 8, 2024, but who were never served.

There is no Opposition.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 10, 2025, AT 8:30 AM 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.

October 10, 2025

Dept. 9

Tentative Rulings

2.	24CV1898	WHEDBEE v. MARSHALL MEDICAL CENTER et al
Motion to Compel Compliance with Subpoena		

The Motion was withdrawn by Defendants on September 15, 2025.

TENTATIVE RULING #2:

HEARING IS DROPPED FROM CALENDAR.

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

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.

October 10, 2025

Dept. 9

Tentative Rulings

3.	25CV1399	SAENZ v. SIERRA-AT-TAHOE, LLC
Petition to Compel Arbitration and Dismiss Class Action		

Sierra-at-Tahoe, LLC. (“Defendant”) brings this petition to compel arbitration and dismiss the class action on the basis that Jared Robert Saenz (“Plaintiff”) signed a valid and enforceable arbitration agreement. In doing so, Defendant argues that Plaintiff explicitly agreed to arbitrate all legally arbitrable claims arising out of his employment and to do so in his individual capacity.

On or about November 18, 2023, Sierra-at-Tahoe, LLC hired Plaintiff as a non-exempt, hourly employee. (Stearns Decl. ¶ 3.) Sierra-at-Tahoe, LLC.’s standard practice is to provide new employees with documents in their preferred language during onboarding. (Stearns Decl. ¶ 4.) As an English language speaker, Sierra-at-Tahoe provided Plaintiff onboarding documents, including an arbitration agreement, in the English language (Melinda Stearns Decl. ¶ 5, & Exhibits “A” & “B”). As part of Sierra-at-Tahoe’s standard onboarding process, Sierra-at-Tahoe provided the arbitration agreement to Plaintiff electronically through Paycom software and afforded Plaintiff an opportunity to ask questions to the Human Resources Director about the agreement and its contents. (Stearns Decl. ¶ 6.) Following his review and execution of the remaining onboarding documents, Plaintiff electronically signed valid and enforceable arbitration agreements in both the 2023-2024 and 2024-2025 winter seasons. (Stearns Decl. ¶ 7.)

Plaintiff’s employment ended on or about January 5, 2025, due to behavior that was perceived as threatening, specifically asking other employees to fight him in the parking lot, which violated Defendant’s zero tolerance policy against workplace violence. (Stearns Decl. ¶ 11.) On May 30, 2025, Plaintiff filed this putative class action, asserting eight causes of action.

“On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) the right to compel arbitration has been waived by the petitioner; or (b) grounds exist for rescission of the agreement.” Code Civ. Proc. § 1281.2(a), (b). California and federal law strongly favor enforcement of arbitration agreements. *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 97 (2000).

“In light of California's strong public policy favoring arbitration . . . [c]ourts should indulge every intendment to give effect to such proceedings and order arbitration unless it can be said with assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute . . .” *Villacreses v. Molinari*, 132 Cal.App.4th 1224, (2005) (internal quotation marks and citations omitted). “The party resisting arbitration bears the burden of

October 10, 2025

Dept. 9

Tentative Rulings

proving that the claims at issue are unsuitable for arbitration.” *Green Tree Fin. Corp. Alabama v. Randolph*, 531 U.S. 79, 92 (2000).

The party seeking to compel arbitration must first establish that an agreement to arbitrate the controversy exists. Code Civ. Proc. §§ 1281.2, 1290.2 see also *Rosenthal v. Great Western Fin. Securities Corp.*, 14 Cal.4th 394, 412–413 (1996). To meet this initial burden, “[t]he arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement.” *Iyere v. Wise Auto Group*, 87 Cal.App.5th 747, 755 (2023). The Court finds that Defendant sufficiently establishes that an agreement to arbitrate exists – Plaintiff signed an arbitration agreement on November 18, 2023, and a second agreement for the 2024-2025 season. (Stearns Decl. ¶¶6-7, 10, Exhibits A & B).

An agreement to arbitrate is lawful so long as it (1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators’ fees or expenses as a condition of access to the arbitration forum. *Armendariz*, 24 Cal.4th 83 at 102 (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)). The Court finds that all of Armendariz’s requirements are met. (Stearns Decl. ¶5, Cravens Decl. ¶4, Exhibits A and B).

“[A]rbitration must be compelled where the petition shows a written agreement to arbitrate, a controversy between the parties that is subject to that agreement, and the other party's refusal to arbitrate.” *Ashburn v. AIG Financial Advisors, Inc.*, 234 Cal. App. 4th 79, 96 (2015). Defendant argues that Plaintiff’s alleged eight causes of action all arise from the employer-employee relationship and are subject to the arbitration agreement.

Plaintiff opposes on several grounds, but the Court first turns to Plaintiff’s argument that the arbitration agreement is unconscionable because it is an adhesive contract. Procedural unconscionability “begins with an inquiry into whether the contract is one of adhesion.” (*Armendariz*, 24 Cal.4th at 113.) An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power “on a take -it-or-leave- it basis.” (*Baltazar v. Forever21, Inc.*, 62 Cal.4th 1237, 1245; see *Armendariz*, 24 Cal.4th at 113.) Arbitration contracts imposed as a condition of employment are typically adhesive. (*Armendariz*, 24 Cal.4th at 114-15; *Serpa v. California Surety Investigations, Inc.*, 215 Cal.App.4th 695, 704 (2013).) The Court agrees that the arbitration was a standard form, there was no negotiation, it was presented on a “take it or leave it basis” and that Plaintiff is not even identified by name. These findings leading the Court to agree it is an adhesive contract and is unconscionable to enforce. There is no reply by Defendant.

TENTATIVE RULING #3:

PETITION TO COMPEL ARBITRATION DISMISS PLAINTIFF’S CLASS ACTION IS DENIED.

October 10, 2025

Dept. 9

Tentative Rulings

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.

October 10, 2025

Dept. 9

Tentative Rulings

4.	PC20160336	WESTMAN v. MISSION DENTAL
Motion to Amend Judgment		

TENTATIVE RULING #4:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 10, 2025, AT 8:30 AM 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.

October 10, 2025

Dept. 9

Tentative Rulings

5.	25CV1426	DRAEGER v. HOLGATE
Motion to Vacate Dismissal		

By tentative ruling, which became Order of the Court on August 8, 2025, the Court granted Defendant's motion to change venue to Amador County. However, on August 4, 2025, Plaintiff filed a request for dismissal without prejudice, which the Court granted.

Defendant then filed a Motion to Vacate Dismissal, arguing that a plaintiff may not voluntarily dismiss her action "if there is a motion pending for an order transferring the action to another court under the provisions of Section 396b." (Code Civ. Proc., § 581, subd. (i).)

The matter was heard ex parte on August 13, 2025, and set on the October 10, 2025 calendar. Upon review of the file, Plaintiff has not filed any opposition to the motion.

The court agrees with Defendant's analysis under Code of Civil Procedure section 581, subdivision (i), and finds that the court dismisses that case in error. The court grants the motion and vacates the dismissal.

TENTATIVE RULING #5:

MOTION TO VACATE DISMISSAL IS GRANTED.

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

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

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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

October 10, 2025

Dept. 9

Tentative Rulings

6.	23CV1430	PATEL et al v. LOSCH et al
Motion for Leave to File Cross-Complaint		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions under Local Rule 7.12.13.

Defendants DANIEL SCALES and D SCALES CONSTRUCTION, INC. (collectively "SCALES") respectfully request leave of Court to file the proposed Cross-Complaint attached hereto as Exhibit A against their co-defendant BENJAMIN LOSCH, an individual doing business as ROSE CONSTRUCTION (collectively "LOSCH"). The Cross-Complaint seeks equitable indemnity, contribution, declaratory relief, breach of contract, and negligence based on LOSCH's unauthorized and negligent conduct that forms the basis of Plaintiffs' claims against SCALES.

Defendants argue this motion should be granted because: (1) the Cross-Complaint is compulsory and arises from the same transaction as Plaintiffs' Complaint; (2) SCALES will be prejudiced if unable to assert these claims; (3) judicial economy favors resolution of all related claims in one proceeding; (4) no party will be prejudiced as discovery has just begun; and (5) the interests of justice support granting leave. The Court agrees.

After a defendant file an answer, leave of court is required to file a cross-complaint. (Code Civ. Proc., § 428.50.) "A party shall file a cross-complaint against any of the parties who filed the complaint... if the cause of action is one that is related to the subject matter of the action and could properly have been asserted in a separate action." (Code Civ. Proc., § 426.30(a).)

Leave to file a compulsory cross-complaint must be granted unless bad faith is shown. (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 98-99.) "Permission to file a cross-complaint at any time during the course of the action must be liberally granted." (*Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 902.)

The motion is unopposed. The Court notes that in the Declaration of James L. Arrasmith, it is stated that the proposed Cross-Complaint is attached as Exhibit A, but no such attachment was included. The Court grants this Motion upon an amended filing with the Exhibit A included.

TENTATIVE RULING #6:

MOTION FOR LEAVE TO FILE CROSS-COMPLAINT IS GRANTED, CONDITIONAL UPON FILING OF AN AMENDED PETITION AND/OR DECLARATION WITH THE PROPOSED CROSS-COMPLAINT INCLUDED.

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

October 10, 2025

Dept. 9

Tentative Rulings

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.

October 10, 2025

Dept. 9

Tentative Rulings

7.	24CV2675	WELLS FARGO BANK v. OLSEN
Motion to Vacate Judgment		

On or about December 2, 2024, Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed its Complaint for Money against Nicolai Olsen, an individual ("Defendant"), and effected service on Defendant. Defendant failed to respond. Thereafter, default judgment was entered on or about July 24, 2025. On or about August 18, 2025, Plaintiff discovered that Defendant filed for bankruptcy on June 23, 2025. Accordingly, Plaintiff now respectfully requests the Court to set aside and vacate the default Judgment against Defendant and dismiss the case without prejudice.

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a dismissal or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. See Cal. Code Civ. Proc. § 473(b). Application for relief shall be made within a reasonable time, in no case exceeding six months after judgment, dismissal, order, or other proceeding was taken. Plaintiff states that it was a surprise to learn that Defendant had filed for bankruptcy, as no notice of bankruptcy had been received prior to August 18, 2025.

There is no opposition.

TENTATIVE RULING #7:

MOTION TO VACATE THE DEFAULT JUDGMENT AND DISMISS THE CASE WITHOUT PREJUDICE IS GRANTED.

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

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

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG

October 10, 2025

Dept. 9

Tentative Rulings

**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.**

October 10, 2025

Dept. 9

Tentative Rulings

8.	24CV1213	AMERICAN EXPRESS v. PAJOUHI
Motion to Amend Judgment		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions under Local Rule 7.12.13.

Code of Civil Procedure § 473(a) provides in pertinent part that: (1) 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.

Plaintiff has discovered that the Judgment signed by this Court awards a monetary amount higher than what was prayed for in Plaintiff's default judgment request. Plaintiff's counsel submitted its default judgment to the court, reflecting a balance lower than the suit amount. This lower amount reflects voluntary payments made by the Defendant towards the balance. The court accidentally modified the default judgment to remove those voluntary payments.

The Motion is unopposed.

TENTATIVE RULING #8:

MOTION TO AMEND THE JUDGMENT IS GRANTED.

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

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

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES

October 10, 2025

Dept. 9

Tentative Rulings

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.

October 10, 2025

Dept. 9

Tentative Rulings

9.	25CV1182	WELLS FARGO BANK v. PENA
Motion to Deem Matters Admitted & Motion to be Relieved		

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") sued Defendant Hermelinda Pena ("Defendant") for the collection of a debt. Thereafter, Defendant filed an Answer. Plaintiff then propounded basic discovery consisting of Request for Admissions. Responses were due on or before July 10, 2025, however, Defendant failed to respond. Accordingly, Plaintiff sent Defendant a meet and confer letter indicating that Plaintiff had not received any responses to the discovery and further provided an extension in which to respond. As of the date of this motion, Defendant has not provided any responses to the discovery.

Any party may obtain discovery by written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. See Cal. Code Civ. Proc. §2033.010. In addition, "[w]ithin 30 days after service of requests for admissions, the party to whom the requests are directed shall serve the original of the response to them on the requesting party ... " See Cal. Code Civ. Proc. §2033.250. Further, a responding party's untimely response to the request for admissions waives any objection to the requests, including one based on privilege or work product. See Cal. Code Civ. Proc. § 2033.280. Moreover, the requesting party may move for and the court may grant an order that the genuineness of any documents and the truth of any matters specified in the requests for admission be deemed admitted. See Cal. Code Civ. Proc. § 2033.420 (a).

There is no opposition. Although Plaintiff has not requested sanctions, §2033.010 of the Code of Civil Procedure mandates that the Court impose monetary sanctions. Therefore, the Court awards \$50.00 in sanctions.

Counsel for the Defendant has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362. A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the attorney and client have a conflict of interest that precludes further representation.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendant at their last known address and on counsel for Plaintiff was filed on September 19, 2025, and October 1, 2025.

There is a Case Management Conference scheduled on December 16, 2025, which is not listed in the proposed Order. The Motion is granted, conditional upon counsel submitting a

October 10, 2025

Dept. 9

Tentative Rulings

revised Order that includes the upcoming hearing date as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #9:

- 1. PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED IS GRANTED.**
 - a. PLAINTIFF IS AWARDED \$50.00 IN SANCTIONS, PAYABLE BY DEFENDANT BEFORE DECEMBER 12, 2025.**
- 2. UPON FILING A REVISED ORDER AND ABSENT OBJECTION, THE MOTION TO BE RELIEVED IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(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).

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.

October 10, 2025

Dept. 9

Tentative Rulings

10.	22CV0448	SNAP-ON CREDIT LLC v. WALKER
Motion to Deem Matters Admitted		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

This civil action arises from an equipment lease agreement between Plaintiff Snap-on Credit LLC ("Plaintiff") and Defendant STEVEN WALKER aka STEVEN DOUGLAS WALKER ("Defendant").

On or about June 12, 2025, Request for Production of Documents, Special Interrogatories, Form Interrogatories, and Request for Admissions were served to Defendant. See Decl. of Taylor M. McGrew, ¶15, Exh. A. Defendant's responses to the discovery requests were to be served no later than July 17, 2025. See *Id.* at ¶16. Defendant failed to respond to any of the discovery by such time. See *Id.* Nor has Defendant provided any responses as of the date of the filing of this motion. See *Id.*

On July 18, 2025, Plaintiff's attorney served Defendant with a "meet and confer" letter. See *Id.* at ¶17, Exh. B. Plaintiff's meet and confer letter makes clear that: (i) Defendant's responses to all of the discovery are due on or before July 25, 2025; and (ii) if Defendant fails to respond accordingly, Plaintiff will seek a court order establishing the truth for the matters specified in the RFAs and imposing monetary sanctions against Defendant. See *Id.* at ¶17-8. To date, Defendant has never responded to any of the discovery, including the Request for Admissions. See *Id.* at ¶16.

Code of Civil Procedure section 2033.280(a), (b), and (c) states in pertinent part: If a party to whom requests for admissions have been directed fails to serve a timely response, that party thereby waives any objection to the requests, including one based on privilege or on the protection for work-product under Section 2018.010. . . . The requesting party may move for an order that the genuineness of any documents and the truth of any matter specified in the requests be deemed admitted, as well as for a monetary sanction under Section 2023.010. 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 paragraph (1) of subdivision (f). It is mandatory that the court impose a monetary sanction under 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 requests sanctions against Defendant in the amount of \$60.00 and payable to Plaintiff's counsel, which the Court finds reasonable.

TENTATIVE RULING #10:

October 10, 2025
Dept. 9
Tentative Rulings

- 1. MOTION TO DEEM MATTERS ADMITTED IS GRANTED.**
- 2. SANCTIONS IN THE AMOUNT OF \$60.00 AWARDED TO PLAINTIFF, PAYABLE BY DEFENDANT TO PLAINTIFF'S COUNSEL BEFORE DECEMBER 12, 2025.**

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.	22CV1334	BLY-CHESTER v. EL DORADO COUNTY BOARD OF SUP.
Demurrer		

Defendant El Dorado County Board of Supervisors (“Defendant” or “Board”)) demurs to Plaintiff Cheryl Bly-Chester’s (“Plaintiff”) Third Amended Complaint (“TAC”). Much of the Court’s analysis and reasoning of its September 6, 2024 tentative ruling still applies and will not be reiterated as we are on the TAC and the second Demurrer¹.

The Demurrer is brought pursuant to Code of Civil Procedure §430.10, subsection (e), on the grounds that the TAC, and each cause of action contained therein, fail to state facts upon which a claim for relief may be stated for the reasons set forth below in the demurrer.

1. Plaintiff’s First Cause of Action Claim for Wrongful Termination in Violation is without merit as a matter of law in that the County and its Board of Supervisors is immune from liability and Plaintiff was never an employee of El Dorado County or its Board of Supervisors;
2. Plaintiff’s Second Cause of Action for alleged violation of Labor Code section 1102.5 is without merit as a matter of law because Plaintiff was not an employee of the County of El Dorado or its Board of Supervisors;
3. Plaintiff’s Third Cause of Action for Gender Discrimination is without merit as a matter of law because Plaintiff was not an employee of the County of El Dorado or its Board of Supervisors, and therefore no cause of action can be alleged under the Fair Employment and Housing Act;
4. Plaintiff’s Fourth Cause of Action for Disparate Treatment is without merit as a matter of law because Plaintiff was not an employee of the County of El Dorado or its Board of Supervisors, and therefore no cause of action can be alleged under the Fair Employment and Housing Act, and to the extent Plaintiff seeks to allege a non-statutory claim, the County of El Dorado and its Board of Supervisors are immune from liability;
5. Plaintiff’s Fifth Cause of Action for violation of due process is without merit as a matter of law because Plaintiff does not allege that she was deprived of either a property interest or a liberty interest that would be protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
6. Plaintiff’s Sixth cause of action for Retaliation for Whistleblowing is without merit as a matter of law because Plaintiff was not an employee of the County of El Dorado or its employees, and therefore no statutory whistleblower claim can be alleged, and to the extent Plaintiff is attempting to allege a non-statutory claim, and to the extent Plaintiff seeks to allege a non-statutory claim, the County of El Dorado and its Board of Supervisors are immune from liability; and,

¹ The Court notes that there have been three Demurrers, but only two have been addressed by the Court.

October 10, 2025

Dept. 9

Tentative Rulings

7. Plaintiff's Seventh Cause of Action for Retaliation in violation of the DFEH, ADU laws, and Misappropriation of Public Funds Per Section 424(a)7 is without merit as a matter of law as Plaintiff is not an employee of the County of El Dorado and its Board of Supervisors and Plaintiff cannot state a claim for violation of the Fair Employment and Housing Act, any alleged violation of "ADU laws" or Penal Code section 424 do not give rise to a cause of action in the County of El Dorado or its Board of Supervisors; and,
8. Plaintiff's Eighth Cause of Action for Disparate Treatment of a Volunteer in Violation of AB 1443 fails to state a cognizable claim because no previously enacted bill entitled AB 1443 has any application to this lawsuit or Plaintiff's theories of discrimination.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

While it seems the parties continue to fail to meaningfully meet and confer, the Court will address the demurrer at this time.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. 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*, 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1143. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.

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

Employment – Second and Third Causes of Action

Defendant argues that Plaintiff has not alleged any new facts that support a claim that she was an employee for purposes of Labor Code § 1002.5 or under FEHA. While Plaintiff has included additional allegations purporting to show she was an employee, the Court agrees with its prior analysis and finds that besides receiving a stipend, the Plaintiff again fails to show additional benefits establishing an employment relationship.

The demurrer is sustained as to the second and third causes of action.

Government Claims Act – First, Fourth, Sixth, and Seventh Causes of Action

Defendant argues that the first, fourth, and sixth causes of action fail to include a statutory basis on which they are brought. In terms of the seventh cause of action, Defendant argues that Plaintiff fails to establish the first two elements of the claim, which are: (1) an enactment must impose a mandatory, not discretionary, duty (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 907-909; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability (see *Shelton v. City of Westminster* (1982) 138 Cal.App.3d 610, 619-620. While the seventh cause of action may have been curable, this is Plaintiff's TAC, and she fails to even address this cause of action in her opposition.

Plaintiff's opposition does not address any of these arguments. Therefore, Plaintiff has waived any right to oppose the demurrer as to these causes of action. (See *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose an issue in motion constitutes a waiver on that issue; *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion."].)

The demurrer is sustained as to the first, fourth, sixth, and seventh causes of action.

Disparate Treatment of Volunteer – Eighth Cause of Action

In the TAC, Plaintiff raises a new cause of action, alleging disparate treatment of a volunteer in violation of AB 1443. Defendant argues that Plaintiff fails to provide a statutory reference for which AB 1443 the claim is referring to. Defendant identifies the 2015 amendment to the FEHA as the possible AB 1443. (Stats 2014 ch 302 § 1 (AB 1443), effective January 1,

2015.) This enactment amended subdivisions (c) and (i) of Government code section 12940. (*Ibid.*) Prior to the amendment, §12940 addressed disparate treatment due to membership in a protected class with respect to the selection or training of a person in an apprenticeship training program, or other training program leading to employment; it also addressed people in an unpaid internship or program to provide unpaid work experience. The TAC fails to allege how this applies to Plaintiff. Plaintiff also briefly points to the County Charter section regarding equal opportunity employment, which does not seem applicable to a claim for disparate treatment under AB 1443.

Plaintiff's opposition does not address any of these arguments. Therefore, Plaintiff has waived any right to oppose the demurrer as to these causes of action. (See *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose an issue in motion constitutes a waiver on that issue; *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion."].)

The demurrer is sustained as to the eighth cause of action.

Leave to Amend

While leave to amend is generally granted, the Court also considers whether a plaintiff has had prior opportunity to amend in response to a demurrer. (*Align Technology, Inc. v. Tran*, 179 Cal.App.4th 949 (2009)). Here, Plaintiff has now filed four different versions of her operative pleading and continues to have the same or similar flaws.

The plaintiff bears the burden of proving that an amendment would cure the defect(s). This includes showing "in what manner [the complaint] can be amended and how that amendment will change the legal effect of [the] pleading" (*Goodman v. Kennedy*, 18 Cal.3d 335, 349) (*Nealy v. County of Orange*, 54 Cal.App.5th 594 (2020)) (*Align Technology, Inc. v. Tran*, 179 Cal.App.4th 949 (2009)). Not only has Plaintiff failed to do so, but she does not even respond to Defendant's arguments as to the first, fourth, sixth, seventh, or eighth causes of action.

TENTATIVE RULING #11:

- 1. PLAINTIFF HAS WAIVED ANY RIGHT TO OPPOSE THE DEMURRER AS TO THE FIRST, FOURTH, SIXTH, SEVENTH, AND EIGHTH CAUSES OF ACTION.**
- 2. THE DEMURRER IS SUSTAINED IN FULL AS TO ALL EIGHT CAUSES OF ACTION 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).

October 10, 2025

Dept. 9

Tentative Rulings

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.	24CV2535	MONTAZERI v. MONTAZERI et al
Demurrer		

This is fundamentally a dispute between father and son over the operation of a jointly-owned mining business that is held by two LLCs. One LLC (“Hwy 193”) owns real property and profits from mining activity performed on its property. The other LLC (“Chili Bar”) performs the mining activity. Plaintiff (the son) owns a 20% interest in both entities, which were gifted to him by his father —defendant Mohsen Montazeri.

The First Amended Complaint (“FAC”) includes 4 causes of action: (1) Breach of Majority Owners’ Fiduciary Duties; (2) Breach of Contract; (3) Breach of Contract; and (4) Derivative Claim on Behalf of Chili Bar, LLC for Breach of Member and Officer’s Fiduciary Duties.

Mohsen Montazeri (“Defendant”) demurs to the first, second and fourth causes of action of the FAC under Code of Civil Procedure §430.10(e) on the following grounds:

1. The First Cause of Action fails to state facts sufficient to constitute a valid cause of action of aiding and abetting against Pamela Montazeri. (Civ. Proc. Code § 430.10, subd. (e).)
2. The Second Cause of Action fails to state facts sufficient to constitute a valid cause of action for breach of contract. (Civ. Proc. Code § 430.10, subd. (e).)
3. The Fourth Cause of Action fails to state facts sufficient to constitute a valid cause of action for aiding and abetting against Pamela Montazeri and fails to state facts sufficient to constitute a valid derivative claim separate from the direct claim asserted in Plaintiff’s First Cause of Action. (Civ. Proc. Code § 430.10, subd. (e).)

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. 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*, 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**

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

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 (“If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort”).

Based on the declaration of Josiah Prendergast, the Court finds that sufficient meet and confer discussions occurred.

First Cause of Action

The first cause of action for breach of fiduciary duty, which is asserted against Plaintiff’s mother, Pamela Montazeri, seeks to hold her liable for aiding and abetting an alleged tort, but Defendant argues that it does not allege any facts amounting to substantial assistance—a required element. “To plead aiding and abetting by a defendant, the plaintiff must allege that the defendant had actual knowledge of the ‘specific primary wrong’ being committed, and gave substantial assistance to the wrongful conduct.” (*Goonewardene v. ADP, LLC* (2016) 5 Cal.App.5th 154, 188, revd. on other grounds (2019) 6 Cal.5th 817 (citing *Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1145, 1146-1147).) “Mere knowledge that a tort is being committed and the failure to prevent it does not constitute aiding and abetting.” (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1326. Defendant argues that Plaintiff has not alleged any facts amounting to assistance, let alone substantial assistance, but instead the Complaint only contains only conclusory allegations that Mrs. Montazeri “knowingly provided” some form of unspecified “substantial assistance” to Defendant’s allegedly tortious conduct. (FAC, ¶¶ 44, 61.)

Plaintiff opposes, arguing that Defendant does not have standing to challenge a cause of action asserted against a co-Defendant; however, offers no authority for that argument.

While the Court finds that the FAC sufficiently alleges that Mrs. Montazeri had actual knowledge, there is merely a conclusory allegation that she provided substantial assistance. The demurrer as to the first cause of action is sustained, with leave to amend.

Second Cause of Action

The second cause of action for breach of contract, under which Plaintiff seeks to hold both named defendants liable for breach of the operating agreements for Hwy 193 and Chili Bar. To prevail on a cause of action for breach of contract, the plaintiff must plead and prove: (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff.

Defendant argues this cause of action is subject to demurrer because the Complaint does not allege any damages or even a breach – damages are not alleged because Plaintiff merely complains that a revenue stream was shifted from one LLC (Chili Bar, where he owns 20%) to the other LLC (Hwy 193, where he owns 20%). In other words, Defendant argues, the Complaint does not allege any facts showing that the shift in revenue stream has any effect on Plaintiff's right to or receipt of distributions and, the Complaint actually alleges that Chili Bar's profitability has not changed. (FAC, ¶ 38 "the business has continued to be just as profitable as before".) A breach of contract is not actionable without allegations that the plaintiff suffered damage resulting from the alleged breach. (See *Bramalea California, Inc. v. Reliable Interiors, Inc.* (2004) 119 Cal.App.4th 468, 473; *Orcila v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1005.)

Plaintiff opposes, arguing that the FAC alleges a claim for damages, which do not need to be pled with specificity and that the claim seeks injunctive relief, to avoid damages that would be suffered. Further, Plaintiff argues that in the absence of actual harm, he could recover nominal damages. Defendant does not substantially reply, instead focusing on the alleged lack of breach.

Defendant argues that the second cause of action also fails to allege sufficient facts to establish any breach. The supposed breach is an alleged change in material nature or purpose of the LLCs, but the Complaint makes clear that no such change has actually occurred—Hwy 193 continues to profit from mining activity performed on its property, and Chili Bar has and continues to profit from performing that mining activity. (FAC, ¶¶ 11–13, 15, 27, 38.) A breach of contract is "[t]he wrongful, i.e., the unjustified or unexcused, failure to perform" the terms of a contract. (*Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 570; 1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 872, p. 919.)

Plaintiff opposes, arguing that the FAC sufficiently alleges a breach of contract based on defendants' unilateral decision to transfer Chili Bar's contract to Highway 192, which violates the requirement of unanimous consent for actions outside the ordinary course of business and which change the nature or purpose of the business.

Defendant replies, arguing that there was no change in the nature or purpose of the businesses, which the Court agrees with. However, the Court finds that the FAC contains sufficient allegations regarding potential breach of the operating agreements for actions outside the ordinary course of business. Therefore, the demurrer as to the second cause of action is overruled.

Fourth Cause of Action

Defendant argues the fourth cause of action also fails to state a claim for relief because it is duplicative of the first cause of action and cannot be asserted alongside the first cause of action. The first cause of action is asserted as a direct claim, the fourth is asserted as a derivative claim, but both seek recovery for the exact same alleged breaches of fiduciary duty. (FAC, ¶¶ 42(c), (e) and 62(a)–(c).) A claim cannot be both direct and derivative. The two are mutually exclusive. (*Schuster v Gardner* (2005) 127 Cal.App.4th 305, 312.) Defendant argues the clear gravamen of the Complaint consists of alleged injuries to Plaintiff, individually, and therefore the fourth cause of action must be dismissed. (FAC, ¶ 43.)

Plaintiff opposes, arguing that the gravamen of this cause of action is for the wrongful transfer of Chili Bar's largest contract to Highway 193. Plaintiff later argues that Defendant argues the fourth cause of action fails to allege a derivative claim for breach of fiduciary duty and only alleges an individual claim, which is not what Defendant is actually arguing.

It is not an abuse of discretion to sustain a demurrer without leave to amend where the demurrer is sustained based upon legal questions that the court decides against the plaintiff as a matter of law. (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436 ["Leave to amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law."]; *Schonfeldt v. State of Calif.* (1998) 61 Cal.App.4th 1462, 1465.)

Defendant argues and the Court agrees that Plaintiff's fourth cause of action is deficient for purely legal reasons. Plaintiff simply cannot assert both a direct and derivative claim based on the same facts and same alleged breaches. (*Schuster v. Gardner* (2005) 127 Cal.App.4th 305, 311–312.) In situations like this, where the gravamen of the plaintiff's claim is that the majority owner(s) has operated the company in such a manner as to deprive the plaintiff of their share of distributions, courts construe the claim to be direct. (See *Jara v. Suprema Meats, Inc.* (2004) 121 Cal.App.4th 1238, 1257–1259.) Therefore, Plaintiff cannot pursue a derivative claim under substantive law and Defendant's demurrer to Plaintiff's fourth cause of action is sustained without leave to amend.

TENTATIVE RULING #12:

- 1. THE DEMURRER AS TO THE FIRST CAUSE OF ACTION IS SUSTAINED, WITH LEAVE TO AMEND WITHIN 10 DAYS OF THE COURT'S ORDER.**

October 10, 2025

Dept. 9

Tentative Rulings

2. **THE DEMURRER AS TO THE SECOND CAUSE OF ACTION IS OVERRULED.**
3. **THE DEMURRER AS TO THE FOURTH CAUSE OF ACTION 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.

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.