

November 21, 2025

Dept. 9

Tentative Rulings

1.	25CV0505	CAPITAL ONE N.A. v. RIDDLE
Request for Admission Facts be Deemed Admitted		

On May 16, 2025, Plaintiff served a Request for Admissions (RFA") on Defendant as part of discovery in this lawsuit. Defendant has not yet 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 Plaintiff by mail on October 29, 2025. Defendant has filed no opposition to the Motion.

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

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

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

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

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

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

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

Plaintiff's motion is granted.

Plaintiff has not requested sanctions for misuse of discovery pursuant to Code of Civil Procedure § 2023.010 ("Misuses of the discovery processes include, but are not limited to ... (d) failing to respond or submit to an authorized method of discovery ... ") and Code of Civil Procedure § 2023.030. ("To the extent authorized by the Chapter governing any particular discovery method or any other provision of this title, the Court, after notice to any affected party, person

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or attorney, and after opportunity for hearing, may impose ... sanctions against anyone engaging in conduct that is a misuse of the discovery process ... "). In addition to these provisions, Code of Civil Procedure § 2033.280(c) makes it mandatory that the court impose a monetary sanction on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. The court issues sanctions in the amount of \$50 payable to Plaintiff within 30 days of service of the signed order.

TENTATIVE RULING #1: PLAINTIFF'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS GRANTED. THE COURT ISSUES SANCTIONS IN THE AMOUNT OF \$50 PAYABLE TO PLAINTIFF WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER.

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

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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.	SC20160157	MCALPINE v. DANIEL A NORMAN MD et al
Compel Responses to Discovery		

On Defendant served Special Interrogatories, Set Two and Requests for Production of Documents, Set Two on November 21, 2024, with responses due on or before December 23, 2024. (Declaration of Ian A. Scharg ("Scharg Declaration"), para. 2-4. The parties negotiated a 30-day extension to January 24, 2025. (Id.) On Defense counsel again extended the deadline to February 13, 2025, by letter dated January 30, 2025. (Scharg Declaration, para. 6.)

When responses had not yet been received, defense counsel followed up by email on April 14, 2025, requesting Plaintiff's responses by April 30, 2025. (Scharg Declaration, para. 7.) In response, Plaintiff's counsel requested and was granted a further one-week extension to May 7, 2025. (Scharg Declaration, para. 8.)

On June 11, 2025, defense counsel again inquired by email as to when they would receive Plaintiff's responses. (Scharg Declaration, para. 9.) Plaintiff requested and was granted another extension to the same date as the trial setting conference on August 19, 2025. (Scharg Declaration, para. 9.) To date Plaintiff has not provided responses to Defendant's discovery propounded on November 21, 2024. (Scharg Declaration, para. 10.)

Special Interrogatories

Code of Civil Procedure section 2030.210(a) requires the party to whom interrogatories have been propounded to: "respond in writing under oath separately to each interrogatory by (1) an answer containing the information sought to be discovered, (2) an exercise of the party's option to produce writings, or (3) an objection to the particular interrogatory"

Code of Civil Procedure section 2030.260, states in pertinent part:

"(a) Within 30 days after service of interrogatories, . . . the party to whom the interrogatories are propounded shall serve the original response to them on the propounding party, unless on motion of the propounding party that court has shorted the time for response, or unless on motion of the responding party the court has extended the time for response. . . ."

(b) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome."

Code of Civil Procedure section 2030.290 authorizes the propounding party to bring a motion to compel a response to unanswered interrogatories, and specifies that the consequence

for failure to timely respond to interrogatories is the waiver of any objections to the interrogatories and the elimination of the option of producing writings under Section 2030.230 in lieu of drafting responses.

Requests for Production of Documents

Code of Civil Procedure section 2031.210(a) provides as follows:

The party to whom an inspection demand has been directed shall responds separately to each item or category of item by any of the following:

- (1) A statement that the party will comply with the particular demand for inspection and any related activities.
- (2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item.
- (3) An objection to the particular demand.

Plaintiff has filed no opposition to this Motion.

Defendant's proposed Order requests the Court to grant the Motion to Compel Plaintiff's responses to discovery, which the court find good cause to grant. The code also requires that the court impose sanctions unless an exception to sanctions apply. There is no evidence of any exception, so the court imposes a nominal sanction of \$50 payable by Plaintiff to Defendant within 30 days of service of the signed order.

TENTATIVE RULING #2: THE MOTION IS GRANTED AS REQUESTED. PLAINTIFF SHALL PROVIDE DEFENDANT, WITHOUT OBJECTION, DISCOVERY RESPONSES TO SPECIAL INTERROGATORIES, SET TWO AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO, WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER. THE COURT ISSUES SANCTIONS IN THE AMOUNT OF \$50 PAYABLE TO DEFENDANT WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER.

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3.	25CV2792	WILD v. EL DORADO COUNTY TRANSIT AUTHORITY et al
Petition for Relief from Gov't Code § 945.4.		

Petitioner asserts a personal injury claim against the El Dorado County Transit Authority ("EDCTA") based on negligence and intentional infliction of emotional distress. The incident, which took place on September 7, 2024, involved a Dial-A-Ride driver.

Government Code §945.4 provides that no suit for money damages may be brought against a public entity on a cause of action for which a claim is required to be presented until a written claim has been presented to the public entity and is either acted upon by the agency or is deemed to have been rejected by the agency. Government Code §911.2(a) requires a government claim based on causes of action for personal injury to be presented to the public entity within six months of the date the cause of action accrued. The deadline for filing Petitioner's claim was March 7, 2025.

Petitioner first contacted EDCTA on October 21, 2024, with a public records request regarding the incident, in which a driver allegedly exposed himself to Petitioner inside her home. Petitioner's counsel received a response from EDCTA on November 1, 2024, with records responsive to the request. On February 24, 2025, prior to the expiration of the six-month deadline, Petitioner's counsel filed a claim with El Dorado County ("EDC") and sent notice of the claim to counsel for the EDCTA with whom she had been in communication via email. Declaration of Nicole Crawford, dated November 14, 2025 ("Crawford Declaration"), para. 5, Exhibit 3.¹

Although the EDCTA received notice of the formal claim submitted to EDC eleven days prior to the expiration of the six-month claim period, it did not communicate with Petitioner's counsel until after the deadline had passed, when it responded to Petitioner's March 11, 2025, inquiry as to whether the claim should be filed with EDCTA instead, and if so, requesting a claim form for the EDCTA. In response to this inquiry, on March 13, 2025, EDCTA through counsel informed Petitioner that the claim had been filed with the wrong public entity. Crawford Declaration para. 7, Exhibit 5. Nevertheless, counsel for EDCTA did contact Petitioner's counsel on March 19, 2025, twelve days after the claims period had expired, inquiring about the possibility of informal resolution of the claim. Petitioner's counsel proceeded to exchange information about the claim with counsel for EDCTA. Crawford Declaration, para. 9, Exhibit 7.

On March 24, 2025, Petitioner received a "Notice of Untimely Claim After Six Months", which said that because a claim was not presented within the time allowed by law, no action will be taken on the claim. Crawford Declaration, para. 10, Exhibit 8. Petitioner then pursued available administrative remedies to obtain leave to file a late claim pursuant to

¹ The Crawford Declaration originally submitted with the Petition has no date or signature line. An identical, corrected Declaration was submitted with Petitioner's Reply.

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Government Code § 911.4, *et seq.*, but was denied. Crawford Declaration, para. 11, Exhibit 9. Petitioner filed this action pursuant to Government Code § 946.6, which provides, in pertinent part (emphasis added):

(a) If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. . . .

(b) The petition shall show each of the following:

(1) That application was made to the board under Section 911.4 and was denied or deemed denied.

(2) The reason for failure to present the claim within the time limit specified in Section 911.2.

(3) The information required by Section 910.

The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) **The court shall relieve the petitioner from the requirements of Section 945.4** if the court finds that the application . . . was made within a reasonable time not to exceed [one year after the accrual of the cause of action] and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:

(1) The failure to present the claim was through **mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim** if the court relieves the petitioner from the requirements of Section 945.4.

* * * *

(e) **The court shall make an independent determination upon the petition.** The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.

Petitioner requests to be relieved of the requirement of complying with Government Code § 945.4, arguing that the defect in her claim was based on mistake, inadvertence, surprise, or excusable neglect, and that Defendant will not be prejudiced by ruling in favor of the Petitioner.

Respondent filed two Oppositions, one on October 23, 2025, that included a motion to strike, and a second on November 7, 2025. Both documents argue that the Petition is unsupported by evidence, fundamentally relying on a clerical error that resulted in the declaration supporting the Petition to be filed unsigned. This has been remedied in the Petitioner's Reply.

Respondent also argues that due diligence would have revealed the nature of the EDCTA entity. The EDCTA website references a "Joint Powers Authority" ("JPA") between EDC and the City of Placerville that includes participation by three EDC Supervisors. Declaration of Richard Linkert ("Linkert Declaration"), para. 3, Exhibit 2. The fact that EDCTA is a separate legal entity is not at all clear from the web page. The Joint Powers Agreement is not posted, and it cannot be determined from the text on the EDCTA web page whether the JPA is merely for the common exercise of joint powers or whether it establishes a separate legal entity. See Government Code § 6502. EDCTA has not submitted any website pages that contain instructions or forms for submitting a claim to the agency under the Tort Claims Act.

Standard of Review

The decision to grant or deny a petition seeking relief under section 946.6 is within the sound discretion of the trial court and will not be disturbed on appeal except for an abuse of discretion. However, the trial court's discretion to grant relief is not "unfettered." It is "to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice."

Section 946.6 is a remedial statute intended "to provide relief from technical rules that otherwise provide a trap for the unwary claimant." As such, it is construed in favor of relief whenever possible.

The policy favoring trial on the merits is the primary policy underlying section 946.6. In order to implement this policy, any doubts should be resolved in favor of granting relief. Consequently, where uncontradicted evidence or affidavits of the petitioner establish adequate cause for relief, denial of relief constitutes an abuse of discretion. In light of the policy considerations underlying section 946.6, a trial court decision denying relief will be scrutinized more carefully than an order granting relief.

Bettencourt v. Los Rios Cmty. Coll. Dist., 42 Cal. 3d 270, 275–76 (1986) (citations omitted).

"Section 946.6 is a remedial statute intended 'to provide relief from technical rules that otherwise provide a trap for the unwary claimant.' As such, it is construed in favor of relief whenever possible." Moreover, "a trial court decision denying relief will be scrutinized more carefully than an order granting relief."

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Renteria v. Juv. Just., Dep't of Corr. & Rehab., 135 Cal. App. 4th 903, 910 (2006) (citations omitted).

[T]o be relieved of the claims presentation requirement under Government Code section 946.6 the petitioner must demonstrate mistake, inadvertence, surprise, or excusable neglect . . . “that neglect which might have been the act of a reasonably prudent person under the same circumstances.” (.)

Lawrence v. State of California, 171 Cal. App. 3d 242, 245 (Ct. App. 1985), *citing* Tammen v. County of San Diego (1967) 66 Cal.2d 468, 476.

The court finds that the failure to file a timely claim was the result of mistake that a reasonably prudent person could have made under the circumstances. “Mistakes will be made: That is why the Legislature has created various provisions to correct them and why courts should not hesitate to implement the cure where it is just to do so—as it surely is here.” Lawrence v. State of California, 171 Cal. App. 3d 242, 246 (Ct. App. 1985). Respondent has not submitted arguments or evidence to establish that it would be prejudiced by the claim being filed six days after the deadline. Granting the Petition is consistent with the established precedents for allowing the parties the opportunity to have a trial on the merits.

TENTATIVE RULING #3: THE PETITION IS GRANTED; PETITIONER HAS 30 DAYS FROM THE DATE OF THE SIGNED ORDER TO FILE A COMPLAINT WITH THE COURT BASED UPON THE CLAIM FILED WITH RESPONDENT ON MARCH 13, 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).

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621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

4.	23CV1387	DEITZ TRUST v. CURTIS et al
Set Aside/Vacate Judgment		

Defendants move to vacate the January 27, 2025, Amended Judgment entered in this case on the basis that it is void for the Court's lack of personal jurisdiction over Defendants. They argue that a default judgment is void as a matter of law for lack of proper service of the Summons and Complaint. Some of the filings in support of this Motion are filed under related case No. 22CV0224, which was previously consolidated with the instant case.

Factual Background

The Complaint, including causes of action for trespass, nuisance, quiet title to easement, and declaratory relief was filed on August 17, 2023. Request for Judicial Notice ("RJN"), Exhibit A.

Plaintiffs filed a Proof of Service of Summons on September 8, 2023, showing service on Defendants by mail, along with a Declaration of Due Diligence by Igor Prokiopyev, a registered California process server. RJN Exhibit B. Plaintiffs filed a second Proof of Service of Summons on April 29, 2024. RJN Exhibit E.

These Proofs of Service indicate that the process server made two attempts to find Defendants at their home but the door was not answered on those occasions. On September 2, 2023, the process server handed the Summons and Complaint to "Son" "at 8:30 am for Jeremiah [an] at 7:20 pm for Lea."

The process server describes "son" as "A white young man approximately 5'8" in height, around 18 years of age . . .", Declaration of Due Diligence, filed November 14, 2025. Defendants claim that their only issue on the property was five years old at the time.

On April 29, 2024, the Plaintiffs filed the second Proof of as well as their Request for Default against Defendants, which was entered by the Court on the same day. RJN Exhibit F. Plaintiffs also filed a Notice of Prove Up Hearing on that same day, which set Plaintiffs' prove-up hearing was scheduled for May 17, 2024. RJN Exhibit G.

On May 1, 2024, Defendants became aware of the April 29, 2024 filings. Declaration of Jeremiah J. Curtis, dated October 1, 2025, ("Curtis Declaration") para. 3. On the same day, Defendants filed a Notice of Motion and Motion for Order Setting Aside Default and/or Vacating Default Judgment. The hearing on that Motion was set for May 31, 2024. At that hearing, the Court continued the matter to June 14, 2024, to allow Defendants to file a proposed Answer with their Motion, which is required by Code of Civil Procedure § 473(b) when a default is set aside for "mistake, inadvertence, surprise, or excusable neglect." Defendants did not appear at

either hearing on their Motion and never filed an Answer. Accordingly, the Motion was denied, and the matter proceeded.

On January 27, 2025, the Court entered an Amended Judgment. Defendants brought this Motion seeking to vacate the Amended Judgment as void for lack of personal jurisdiction due to Plaintiffs' defective service of summons.

Request for Judicial Notice

Defendant has filed a Request for the court to take judicial notice of multiple filings in this action. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Discussion

The instant Motion challenging the January 27, 2025, Amended Judgment is brought on a different basis than Defendants' May, 2024 challenge against the April 29, 2024, entry of default. That challenge was based on "mistake, inadvertence, surprise, or excusable neglect" under Code of Civil Procedure § 473(d). Instead, the current challenge is based on Code of Civil Procedure § 473(d), which allows the Court: "on motion of either party after notice to the other party, set aside any void judgment or order."

The parties accuse each other of multiple formal defects:

- Defendants point to a violation of California Rules of Court, Rule 3.221(c) by failing to serve Mr. Curtis with a copy of the Court's Alternative Dispute Resolution ("ADR") package. See RJN Exhibit B (indicating that the only documents served on Mr. Curtis were the Summons, Complaint, and Civil Case Coversheet). Plaintiff responds that at the time of service the ADR materials were not available from the Court Clerk.
- Defendants charge that Plaintiffs failed to serve Defendants with a copy of the Court's Notice of Case Assignment and Case Management Conference in violation of former Local Rule 7.12.06(A), which was still in effect at the time. Plaintiff responds that no such document was in Plaintiff's possession at the time of

service. Declaration of Nathaniel Wilson in support of Opposition, dated November 14, 2025.

- Defendants point out that the wrong box was checked for the method of service on Plaintiffs' Proof of Service of Summons. Although the Declaration of Due Diligence says service was made by way of substituted service on September 2, 2023, by leaving the documents at Defendants' home. However, Plaintiffs' Proof of Service of Summons states that the documents were served by Mail and Acknowledgement of Receipt of Service. and the box for service by Substituted Service is not checked.

These details are secondary to the central question of whether the judgment is void. This is a question of law based on the record before the court. Sakaguchi v. Sakaguchi, 173 Cal. App. 4th 852, 858 (2009). If the ultimate question is the validity of the service of the Summons and Complaint, the Declaration of the process server is entitled to a rebuttable presumption of accuracy, Evidence Code § 647, which resolve the factual question of whether the individual who answered Defendants' door on September 2, 2023 was a five year-old child or an adult. It appears that, lacking any contrary evidence in the record, the service was validly made on an individual who was apparently an adult who was present at the residence. California Code of Civil Procedure § 415.20(b).

However, the Court need not examine the validity of the substituted service because the judgment is void for another reason: the Plaintiffs failed to serve Defendants with a Statement of Damages prior to the entry of judgment as required by Code of Civil Procedure § 425.11. *See, Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166- 1167; Greenup v. Rodman (1986) 42 Cal.3d 822, 826-829; Schwab v. Rondel Homes, Inc. (1991) 53 Cal.3d 428, 435. *See also*, Code of Civil Procedure § 580(a) ("The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11.")

TENTATIVE RULING #4: DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANTS' MOTION TO VACATE THE AMENDED JUDGMENT DATED JANUARY 27, 2025, IS GRANTED.

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5.	24CV2162	ESKATON PROPERTIES, INC. v. AST
Request for Admission Facts be Deemed Admitted		

Plaintiff served Request for Admissions Set One ("RFA"), and Form Interrogatories, Set One, on August 4, 2025, with responses due on September 8, 2025. To date no responses have been received. Plaintiff moves to have the facts in the RFA deemed admitted, for an Order compelling response to the Form Interrogatories, and for monetary sanctions per Code of Civil Procedure § 2023.020.

Defendant has filed no opposition to the Motion.

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:

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Code of Civil Procedure § 2030.290 addresses the failure to respond to interrogatories:

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

(a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, 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 Section 2030.210, 2030.220, 2030.230, and 2030.240.

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

(b) The party propounding the interrogatories may move for an order compelling response to the interrogatories.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. . . .

Plaintiff's counsel has filed a Declaration detailing attorney's fees incurred in preparing and filing this Motion, in the amount of \$577.00. The Code of Civil Procedure section authorizes sanctions only against a party who has unsuccessfully made or opposed a motion to compel responses to interrogatories, and Defendant did not oppose this Motion. However, California Rules of Court, Rule 3.1348(a) authorizes sanctions even though the Motion is unopposed. Further, sanctions are mandatory under Code of Civil Procedure § 2033.280 on the party whose failure to serve a timely response to requests for admission necessitated bringing a motion to compel a response.

TENTATIVE RULING #5: PLAINTIFF'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS GRANTED. PLAINTIFF'S MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES, SET ONE, IS GRANTED. DEFENDANT IS DIRECTED TO RESPOND TO FORM INTERROGATORIES, SET ONE, WITHOUT OBJECTION, WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER. DEFENDANT IS ORDERED TO PAY SANCTIONS IN THE AMOUNT OF \$577, WHICH SHALL BE PAID IN FULL TO PLAINTIFF WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER.

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6.	25CV1819	JPMORGAN CHASE BANK, N.A. v. SELLERS
Set Aside/Vacate Judgment		

The *pro per* Defendant requests relief from a default judgment pursuant to Code of Civil Procedure § 473(b) based on mistake, inadvertence, or excusable neglect. Specifically, Defendant alleges that he was enrolled in a debt settlement program, and that the debt that is the subject of this action was part of that program. He did attempt to file an Answer after the default was entered but it was rejected as untimely. Declaration of Daniel Sellers, dated October 7, 2025.

[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite v. Southern Pacific Co.* (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally “so cases can be tried on the merits”]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

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

TENTATIVE RULING #6: DEFENDANT’S MOTION TO SET-ASIDE THE DEFAULT JUDGMENT IS GRANTED; DEFENDANT SHALL FILE AN ANSWER ON OR BEFORE DECEMBER 5, 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).

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PARTIES MAY PERSONALLY APPEAR AT THE HEARING.**

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621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

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7.	24CV2106	BAZEMORE v. BYC ENTERPRISES, LLC, et al
Motion to Consolidate		

The *pro per* Plaintiff moves to consolidate this case with 24CV2236 for all purposes, pursuant to Code of Civil Procedure § 1048(a) and California Rules of Court, Rule 3.350. No opposition to the Motion has been filed.

The Complaint in the case numbered 24CV2236 involves this Plaintiff as a Defendant in that case, and the Plaintiff in that case is Dedra Cox, who alleges she was working as a Project Manager for Plaintiff and alleges that she was injured by Plaintiff's dog when she agreed to dog sit at Plaintiff's personal residence in El Dorado Hills. Following this incident, Dedre Cox alleges that Plaintiff withheld payments that she was due for services rendered and terminated her employment relationship with Plaintiff in retaliation. The causes of action in that case include negligence, Civil Code § 3342 (dog bite statute), strict liability, premises liability, breach of contract and covenant of good faith and fair dealing, unjust enrichment, work environment harassment and retaliation.

The Complaint in the instant action (24CV2106) includes causes of action for rescission, conversion, money had, fraud/concealment and unfair competition. The underlying dispute involves the construction of a basketball court on Plaintiff's residential property.

Code of Civil Procedure § 1048(a) provides: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Plaintiff argues that the two cases are "so interrelated that separate proceedings would likely create more confusion and complexity than a consolidated proceeding." The Court disagrees. Both actions relate to Plaintiff's residential property, and there all similarities end. The opposing parties are completely different sets of individuals and entities, the causes of action in a dog bite case (personal injury and negligence) that include employment issues between the parties, bear no relationship to the property and financial damages associated with a failed contract/construction project in the other case.

TENTATIVE RULING #7: PLAINTIFF'S MOTION TO CONSOLIDATE IS DENIED.

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Tentative Rulings

8.	25CV1717	PERDICHIZZI v. CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE et al
Motion to Vacate Dismissal		

This action was dismissed without prejudice when the Court adopted the Tentative Ruling following hearing on August 15, 2025, because the individual Plaintiff purported to represent a non-profit corporation without legal counsel.

Petitioner asks the Court to vacate this dismissal because she has now obtained counsel for the non-profit corporation she represents. In the Complaint, Plaintiff asserts that she did have counsel in June 2024. That attorney sent a demand letter to Defendant and notified Defendant of Plaintiff's intention to file litigation. Complaint, paras. 8, 10. Plaintiff also argues that she is a real party in interest as an individual, but the Complaint relates to disputes over disbursement of grant of funds by Defendant to the non-profit corporation to which the grant was awarded.

The Motion to strike the Complaint was filed on July 15, 2025. At all times between the date that the Motion to strike the Complaint was filed and the August 15, 2025, hearing, Plaintiff had the ability to retain counsel and save the case. Instead, Plaintiff filed an Opposition on July 21, 2025, in which she argued that there should be an exception to the rule that corporations must be represented by an attorney in specialized circumstances involving a tribal non-profit. Having knowingly disregarded the representation requirement and arguing that it does not apply to her case, she cannot now claim that the failure to retain counsel was "excusable neglect" under Code of Civil Procedure § 473.

The Motion to strike was granted without prejudice. If Plaintiff has now retained counsel the Complaint may be re-filed.

TENTATIVE RULING #8: THE MOTION TO VACATE DISMISSAL IS DENIED.

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9.	22CV1707	TRUSTEE OF THE RICHARD W. HARRIS REVOCABLE TRUST v. KERN
Motion to Tax Costs		

Code of Civil Procedure §§ 1032(b) gives a prevailing party a right to recover costs in any action or proceeding.

On September 26, 2025, Defendant/Cross-Complainant (“Kern”) filed a Memorandum of Costs showing \$17,153.40 in litigation expenses. Plaintiff/Cross-Defendant (“Harris”) filed an Opposition on October 3, 2025.

A. Standard of Review

“Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.” (§ 1032, subd. (b).) . . . Allowable costs must be “reasonably necessary to the conduct of the litigation” and “reasonable in amount.” (§ 1033.5, subd. (c)(2)–(3).) Costs that are “merely convenient or beneficial to its preparation” are disallowed. (§ 1033.5, subd. (c)(2).)

The losing party may dispute any or all the items in the prevailing party's memorandum of costs by filing a motion to strike or tax costs. (Cal. Rule of Court, rule 3.1700(b).) If items on a memorandum of costs appear to be proper charges on their face, those items are prima facie evidence that the costs, expenses, and services are proper and necessarily incurred. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1266, 74 Cal.Rptr.2d 607; *Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266, 155 Cal.Rptr. 516.) The burden then shifts to the objecting party to show them to be unnecessary or unreasonable. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, 84 Cal.Rptr.2d 753.)

Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for an abuse of discretion. (*Lubetzky v. Friedman* (1991) 228 Cal.App.3d 35, 39, 278 Cal.Rptr. 706.) “The trial court's exercise of discretion in granting or denying a motion to tax costs will not be disturbed if substantial evidence supports its decision.” (*Ibid.*)

Doe v. Los Angeles Cnty. Dep't of Child. & Fam. Servs., 37 Cal. App. 5th 675, 693 (2019)

Specifically, the following costs are challenged:

1. Item 9: Trial transcripts (\$4,216.75) Code of Civil Procedure § 1033.5(b)(5). Harris argues that these were not Court-ordered transcripts and should be disallowed. Kern responds that the Court referenced transcripts in issuing its ruling and, accordingly, “impliedly” ordered

transcripts “to be able to use them”. Further, Kern argues that the cost of transcripts were reasonably necessary to the conduct of the litigation in reasonable amount.

However, trial transcripts that are not ordered by the Court are not merely absent from the list of allowable expenses in Code of Civil Procedure § 1033.5(a), they are expressly disallowed “unless expressly authorized by law.”

2. Item 13: Trial exhibits (\$548.12) Code of Civil Procedure § 1033.5(a)(13). Kern argues that these are detailed and documented in the invoice attached to the Declaration of Eric Miller, dated November 7, 2025, Exhibit D. Harris withdraws his objection to this item in his Reply.
3. Item 14: Electronic filing fees (\$1,091.65). Code of Civil Procedure § 1033.5(a)(14). Harris argues that the amount of these fees is excessive and unexplained. On this item, Kern:
 - a. Concedes \$60 of this amount, which upon review was determined to have already been requested as a motion fee in another line item;
 - b. Agrees to transfer \$374.20 to the different category of messenger fees for Court filings—Harris objects that the amount as excessive. The amount represents filings with the Court in Cameron Park performed by a messenger service in Sacramento on four occasions.
 - c. Proposes the remaining \$657.45 be allowed as electronic filing fees and not taxed.

The court finds good cause to grant the motion to tax as to the transcript costs and the duplicative \$60 motion fee.

TENTATIVE RULING #9: PLAINTIFF’S MOTION TO TAX COSTS IS GRANTED AS TO THE TRANSCRIPT COSTS (\$4,216.75) AND THE \$60 MOTION FEE, FOR A TOTAL OF \$4,276.75 TO BE DEDUCTED FROM THE COSTS CLAIMED BY KERN.

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

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Tentative Rulings

10.	22CV1378	T.C. v. DOE 1
Judgment on the Pleadings		

TENTATIVE RULING #10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 2, 2026, IN DEPARTMENT NINE.

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Tentative Rulings

11.	24CV1621	WATERMARK ON THE LAKE HOA v. BRADLEY
Motion for Summary Judgment		

TENTATIVE RULING #11: AT THE REQUEST OF THE PARTIES, THIS MATTER IS CONTINUED TO 8:31 A.M. ON FRIDAY, JANUARY 9, 2026, IN DEPARTMENT NINE.

12.	24CV2173	BUCHELE v. D'ARCY
Demurrer / Join Indispensable Party		

Plaintiff sues for 1) intentional misrepresentation, 2) negligent misrepresentation, 3) “for order to declare deeds invalid and constructive trust” 4) financial elder abuse, and 5) conversion.

Attached to the Complaint are two quitclaim deeds transferring a parcel of real property to “Wendy Darcy, . . . and Ted Rivers, . . . as Tenants in Common.” The first deed is dated February 28, 2024, and the second is dated March 5, 2024. Both are executed by Plaintiff and notarized. The second deed corrects the reference to the grantor: in the first deed he is named as an individual and in the second deed he is named as trustee of his trust. Complaint, paras. 14-15.

Leave to Amend / Indispensable Party

The Defendant has demurred to the Complaint, or in the alternative, moves to join an indispensable party, Ted Rivers, whose name is also on the deeds attached to the Complaint. On September 30, 2025, Plaintiff filed an “Amendment to Substitute Doe Defendant One for Named Defendant.” The Court will consider this a request for leave to amend the Complaint to add Ted Rivers as a Defendant, and grants Plaintiff leave to amend. Code of Civil Procedure § 473(a)(1) provides:

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

The addition of Ted Rivers to the Complaint moots the alternative motion by Defendant to add an indispensable party.

Demurrer - 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.)

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

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., 4 Cal.App.4th 857, 877 (1992).

Intentional/Negligent Misrepresentation (First and Second Causes of Action)

The elements of intentional misrepresentation “are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage.” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231 [162 Cal.Rptr.3d 864].)

Aton Ctr., Inc. v. United Healthcare Ins. Co., 93 Cal. App. 5th 1214, 1245–46 (2023).

The elements of negligent misrepresentation are “(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.” (*Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243, 70 Cal.Rptr.3d 199.) While there is some conflict in the case law discussing the precise degree of particularity required in the pleading of a claim for negligent misrepresentation, there is a consensus that the causal elements, particularly the allegations of reliance, must be specifically pleaded. (E.g., *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184, 132 Cal.Rptr.2d 490, 65 P.3d 1255; *Cadlo v. Owens–Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519, 23 Cal.Rptr.3d 1.)

Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Servs. Grp., Inc., 171 Cal. App. 4th 35, 50, 89 Cal. Rptr. 3d 473, 483 (2009)

In this case, the Complaint contains all the necessary allegations to support a cause of action for both intentional and negligent misrepresentation.

“For order to declare deeds invalid” and Constructive Trust (Third Cause of Action)

The Third Cause of Action describes remedies, not a legal cause of action. Constructive trust is an equitable remedy, not a cause of action. Shoker v. Superior Ct. of Alameda Cnty., 81 Cal. App. 5th 271, 278 (2022). The Court understands the request “for an Order to declare deeds invalid” as a request for declaratory judgment.

Code of Civil Procedure § 1060 describes the availability of a declaratory judgment:

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal

rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

“A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court.” Maguire v. Hibernia Savings & Loan Soc., 23 C.2d 719, 728 (1944).

The Court finds that the Complaint sufficiently alleges the existence of an actual controversy that can support a request for declaratory relief.

Financial Elder Abuse (Fourth Cause of Action)

Welfare & Institutions Code § 15610.30 sets forth the statutory elements of a claim of financial elder abuse:

- (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:
 - (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, . . .
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

* * *

Welfare & Institutions Code § 15610.30.’

The Court finds that the elements of financial elder abuse are sufficiently plead in the Complaint.

Conversion (Sixth [sic] Cause of Action)

“Conversion is generally described as the wrongful exercise of dominion over the personal property of another. [Citation.] The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. [Citation.]” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119, 55 Cal.Rptr.3d 621.) “Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial.” (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066, 80 Cal.Rptr.2d 704.)

Regent All. Ltd. v. Rabizadeh, 231 Cal. App. 4th 1177, 1181 (2014).

The Court finds that the elements of conversion are properly pleaded within the Complaint.

Although the Court finds that the Complaint is sufficient to support claims for intentional misrepresentation, negligent misrepresentation, declaratory judgment, financial elder abuse, and conversion, given that a First Amended Complaint is required to add a party the Plaintiff may take this opportunity to conform the caption, the prayer and the stated causes of action. The caption references statutes that are not otherwise referenced in the pleading. Further, there is a claim for constructive fraud listed in the caption and the prayer but not in the body of the document.

TENTATIVE RULING #12: PLAINTIFF IS GRANTED LEAVE TO AMEND THE COMPLAINT TO ADD A PARTY; A FIRST AMENDED COMPLAINT SHALL BE FILED BY DECEMBER 5, 2025. DEFENDANT’S DEMURRER IS OVERRULED.

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

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

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

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

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13.	25CV1145	LANE v. EL DORADO IRRIGATION DISTRICT et al
Demurrer		

TENTATIVE RULING #13: THIS MATTER IS CONTINUED T 8:30 A.M. ON FRIDAY, DECEMBER 5, 2025, IN DEPARTMENT NINE.

14.	24CV2015	TRUMBLY v. BAILEY
Demurrer		

The First Amended Complaint (“FAC”) alleges financial elder abuse, fraud, breach of fiduciary duty and constructive trust.

Factual Background

The FAC sets forth a statement describing the background of the case and the relationships of the parties, as follows:

4. On or about January 1, 2015, Plaintiff WARREN TRUMBLY and joint venture partners Capitol Consultants, Inc. and the Briggs Family Trust (hereinafter “BFT”) executed a joint venture agreement (hereinafter, the “Joint Venture Agreement”) making Plaintiff and the Briggs Family Trust and Capitol Consultants, Inc. joint venture partners in real property located in El Dorado County. This agreement was signed by all parties and an initial contribution of \$200,000 was provided by Plaintiff. At the time of execution, John Briggs was the drafter and signatory on behalf of the Briggs Family Trust (BFT) and Capitol Consultants, Inc. Ronald Briggs at the time also contributed purported consideration of \$200,000 and pledged development services. At all times after, Capitol Consultants acted as the managing partner of the joint venture and all decision making was through Capitol Consultants. John Briggs was never an acting partner in his individual capacity.

5. Due to the passing of John Briggs, the BFT and management of the joint venture property was turned over to Defendant after she voluntarily became the acting president of Capitol Consultants, Inc. and trustee of the BFT.

6. On or about January 19, 2022, without notice to Plaintiff, Defendant in her capacity as the president and C.E.O. of Capitol Consulting, Inc. deeded the joint venture property to herself as trustee of the BFT.

7. There are no other estate planning documents known to Plaintiff and there are no documents that confer any authority on Defendant to handle or manage Plaintiff’s affairs. Despite the written Joint Venture Agreement and continued contributions in cash to the joint venture by the Plaintiff, Defendant by her conduct exhibited intent as soon as she took control of Capitol Consulting, Inc. and became trustee of the BFT to take the elder Plaintiff’s property by forfeiting his investment.

Request for Judicial Notice

Defendant has filed a Request for the court to take judicial notice of a recorded deed and a Notice of Trustee’s Sale Under Deed of Trust. 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.

A grant deed recorded with the County Recorder’s Office of El Dorado County is an official act subject to judicial notice. Ragland v. U.S. Bank Nat’l Assn., 209 Cal. App. 4th 182, 194, (2012).

Accordingly, Defendant’s request for judicial notice of the deeds attached to the Request is granted. The Court finds no statutory basis to take judicial notice of a Notice of Trustee Sale which is not in the Court’s files or recorded with the County.

Demurrer - 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.)

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

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., 4 Cal.App.4th 857, 877 (1992).

Financial Elder Abuse (First Cause of Action)

Welfare & Institutions Code § 15610.30 sets forth the statutory elements of a claim of financial elder abuse:

- (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:
 - (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, . . .

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

* * *

Welfare & Institutions Code § 15610.30.

Defendant argues that the pleading is insufficient because it does not allege a wrongful use or intent to defraud. It is true that there is no such recital in the FAC of wrongful use or intent to defraud. The FAC does allege several knowingly false statements under the Fraud cause of Action, but it does not make any specific allegations about Defendant's wrongful use (as opposed to acquisition) of the property or wrongful intent (other than "intent to make a quick sale", FAC para. 16, p. 5:23, which does not reference any intent towards Plaintiff.). All of the factual allegations pertaining to this Cause of Action could be interpreted as acts of negligence or incompetence, not necessarily of "intent to defraud."

Paragraph 7 of the FAC states: "Defendant by her conduct exhibited intent as soon as she took control of Capitol Consulting, Inc. and became trustee of the BFT to take the elder Plaintiff's property by forfeiting his investment." The Court finds that this statement may be understood to describe intent to defraud, and the elements of financial elder abuse are sufficiently plead in the FAC.

Fraud (Second Cause of Action)

The elements of fraud 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).

Defendant argues that the FAC does not meet the required specificity required for fraud allegations and the Court agrees. FAC para. 23 contains conclusory and general references to Defendant’s writings, utterances, statements and concealments without specificity. Nor does the language of that paragraph allege an intent to defraud or justifiable reliance on fraudulent representations and/or omissions.

The Court finds that the elements of fraud are not sufficiently plead in the FAC.

Breach of Fiduciary Duty (Third Cause of Action)

It is axiomatic that in order to plead a breach of fiduciary duty one must first plead the existence of a fiduciary duty. The FAC omits this prerequisite. Plaintiff is an investor in a joint venture that was created by contract. Defendant became the successor in interest to that contract through her ascension, following the death of Briggs, to the position as trustee of the Trust that was the other signatory/investor to the joint venture agreement. Defendant also held the position of acting President of Capitol Consultants, Inc. after Briggs’ death. By contract Capitol Consultants managed the joint venture, but that does not in itself establish any fiduciary relationships among the joint venture partners.

The Court finds that the elements of breach of fiduciary duty are not sufficiently plead in the FAC.

Constructive Trust (Fourth Cause of Action)

The FAC lists “constructive trust” as the Fourth Cause of Action while explicitly recognizing that constructive trust is not a cause of action. Shoker v. Superior Ct. of Alameda Cnty., 81 Cal. App. 5th 271, 278 (2022). While it is true that there are pleading requirements required to support the imposition of a constructive trust, that does not justify asserting a formal “cause of action” that does not actually exist. The requisite facts could be plead without representing them as a separate legal claim.

TENTATIVE RULING #14: DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS GRANTED AS TO THE RECORDED DEEDS APPENDED TO THE REQUEST; IT IS DENIED AS TO THE NOTICE OF TRUSTEE SALE UNDER DEED OF TRUST. DEFENDANT’S DEMURRER IS SUSTAINED AS TO THE SECOND, THIRD AND FOURTH CAUSES OF ACTION WITH LEAVE TO AMEND; DEFENDANT’S DEMURRER IS OVERRULED AS TO THE FIRST CAUSE OF ACTION. ANY AMENDED COMPLAINT MUST BE FILED BY DECEMBER 19, 2025.

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