**1. GENASCI v. MACRAE SC-20180229**

**Judgment Debtor Examination.**

**TENTATIVE RULING # 1: UPON REQUEST OF THE JUDGMENT CREDITOR, THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 6, 2022 IN DEPARTMENT NINE.**

**2. RICH XIBERTA GLASS, INC. v. GOLDLINE BRANDS, INC. PC-20200048**

**Judgment Debtor Examination.**

**TENTATIVE RULING # 2: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, MARCH 4, 2022 IN DEPARTMENT NINE.**

**3. PEOPLE v. $115,720 U.S. CURRENCY PC-20200401**

**Hearing Re: Claim Opposing Forfeiture.**

On August 3, 2020 claimant Judkins filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of administrative proceedings.

On August 17, 2020 the People filed a petition for forfeiture of cash in the amount of $115,720, gold valued at $21,673, silver valued at $5,538, platinum valued at $785, and collectable U.S. Currency valued at $5,925 that was seized by the El Dorado County Sheriff's Department. The petition states: the funds and other property are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

The proof of service of the petition declares that on August 17, 2020 the petition was served on the claimant by mail to his address of record.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least

one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior

court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that

the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Emphasis added.) (Health and Safety Code, § 11488.5(e).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

The court was previously advised that there was a criminal proceeding pending.

At the hearing on June 16, 2021, claimant requested a continuance to retain counsel. The People did not object. The hearing was continued to August 13, 2021. At the hearing on August

13, 2021, the claimant/respondent confirmed that he has retained an attorney. Counsel has advised the People that while he helped claimant prepare the claim, he does not represent claimant in this matter.

At the last hearing on February 4, 2022, the People advised the court the parties were working on some negotiations and requested a continuance.

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**4. MATTER OF DAVID R. 22CV0007**

**OSC Re: Name Change.**

The petition seeks to change the name of a minor and one of the minor's parents has not joined in the petition. While there is a proof of personal service of notice of the hearing and the order to show cause on Brandy B. in the court's file, the verified petition does not state that Brandy B. is the other parent entitled to service. In fact, the portion of the petition wherein the name and address of the other parent is to be stated is blank. (See Petition, paragraph 7.e.(2).) Service on the other parent is required. (Code of Civil Procedure, § 1277(a).)

The court can not rule on the merits of the petition until this issue of service is resolved.

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**5. MATTER OF KESSLER 21CV0013**

**OSC Re: Name Change.**

**TENTATIVE RULING # 5: THE PETITION IS GRANTED.**

**6. LERCH v. RALEY'S PC-20200498**

**Motion to Compel Further Responses to Requests for Production.**

On November 17, 2021 plaintiff filed a motion to compel further responses to requests for production. Plaintiff moves to compel defendant to provide further responses and further production concerning requests for production numbers 7, 44, and 45. Plaintiff also requests an award of monetary sanctions in the amount of $1,110 representing attorney fees and costs incurred to bring the motion.

In lieu of an opposition, defendant filed a statement re: plaintiff's motion to compel.

There was no reply in the court's file when this ruling was prepared.

"(a) The party to whom an inspection demand has been directed shall respond 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. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. ¶ (c) Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated. (Code of Civil Procedure, § 2031.210.) "A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code of Civil Procedure, § 2031.220.) "(a) Any documents

demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. ¶ (b) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form." (Code of Civil Procedure, § 2031.280.)

"On receipt of a response to an inspection demand, the party demanding an inspection may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: ¶ (1) A statement of compliance with the demand is incomplete. ¶ (2) A representation of inability to comply is inadequate, incomplete, or evasive. ¶ (3) An objection in the response is without merit or too general." (Code of Civil Procedure, § 2031.310(a).)

On January 4, 2022 defendant filed a statement re: motion to compel wherein it was stated that defendant did not oppose the substantive motion of plaintiff, some of the requested further production was sent to plaintiff's counsel on November 23, 2021 thereby rendering moot that portion of the motion, and the requested handbooks and employee documents sought in request numbers 44 and 45 will be produced within ten days. Upon request of the parties, the motion, which was originally set for hearing on January 7, 2021, was continued to January 28, 2022. On January 28, 2022 the court continued the hearing to March 4, 2022.

Should it be confirmed by the moving plaintiff that the further responses and production was received, the court is inclined to find the motion to compel further responses and production is moot and leave plaintiff to the remedy of seeking further responses from what plaintiff has received in the responses and production provided.

Appearances are required to confirm that plaintiff received the handbooks and employee documents sought in request numbers 44 and 45.

Discovery Sanctions

"…If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction 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." (Code of Civil Procedure, § 2023.030(a).)

"Except as provided in subdivision (j), 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 further response to an inspection demand, 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" (Code of Civil Procedure, § 2031.310(h).)

The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

Plaintiff requests that sanctions not be imposed for the following reasons: defendant has acted in good faith throughout this litigation related to plaintiff's counsel's discovery concerns and will have and/or will shortly serve all responsive items that are the subject of the motion; and given the effective meet and confer deadline and all other factors discussed in defense counsel's declaration, it does not appear sanctions are warranted.

Defense counsel declares: all remaining video and the requisite software program was mailed to plaintiff's counsel on November 23, 2021; while defense counsel initially planned to oppose the motion and stand on the objections asserted, the objections were reconsidered and defendant will simply produce all responsive documents in the spirit of good faith; in counsel's

opinion, this is an issue that could have been easily resolved by a phone call; the exhibits to the motion show that the defendant made a good faith attempt to resolve the discovery issues; defense counsel also worked diligently to transmit a very large video file to plaintiff's counsel, which could not be copied using conventional techniques; on October 14, 2021 defense counsel was finally able to upload the store video file to Dropbox and shared the link with plaintiff's counsel that day; this occurred after four hours of unsuccessful attempts to copy the file to a CD Rom, then a DVD, and then four different thumb drives; he asked plaintiff's counsel by email at 2:18 p.m. on October 14, 2021 to confirm he was able to access the file at Dropbox; when defense counsel heard nothing, he emailed again on October 18, 2021 asking if plaintiff's counsel as able to download the video file; he heard nothing from plaintiff's counsel after October 18, 2021 until November 9, 2021 when plaintiff's counsel set an email asking about the software needed to access the video file; defense counsel was out of the office and it was a hectic week and did not immediately address the request; due to the delay in requesting the software, it did not occur to defense counsel that plaintiff's counsel felt time was of the essence; inasmuch as the meet and confer letter from plaintiff's counsel authored on November 9, 2021 set a date to comply with the requested production on August 12, 2021, a date already long passed, that date was mistakenly entered in the defense law firm's limitations calendar as August 12, **2022**, thus never triggering a response; and the motion to compel was filed just seven days later with no further meet and confer attempts. (Emphasis in original.) (David Ingram's Declaration, paragraphs 3-9.)

Under the circumstances presented, the court finds that other circumstances make the imposition of sanctions unjust. The court denies the request for monetary sanctions.

**TENTATIVE RULING # 6: THE COURT DENIES THE MOTION FOR SANCTIONS. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19**

**CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**7. CULETU v. MAGANA 21CV0386**

**Petition to Approve Minor's Compromise.**

The petition states the minor sustained injuries in a motor vehicle accident consisting of soft tissue injuries to the neck, back, and right shoulder. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $15,000.

The petition states the minor incurred $3,253 in medical expenses for chiropractic care and the liens amount to $3,253. There are copies of the bills substantiating the claimed medical expenses attached to the petitions as required by Local Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered. There is no current doctor's report concerning the minor's condition and prognosis of recovery as required by Local Rule 7.10.12A.(3). The court needs a declaration from the treating doctor or provide the medical records.

The minor's attorney requests attorney's fees in the amount of $3,750, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Rules of Court, Rule 7.955(a)(1).) The amount of fees requested appear to be reasonable under the circumstances. The minor's attorney also requests reimbursement for costs in the amount of $435 for the court filing fee.

The net settlement amount is to be deposited in a blocked account.

Pursuant to Rules of Court, Rule 7.952(a) the petitioner and the minor are required to appear at hearings on petitions to approve minor compromises, unless the court dispenses with the requirement upon finding good cause.

**TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR**

**TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**8. PETERSON v. KIRKPATRICK PC-20200238**

**Defendant Lytx, Inc.'s Motion to Bifurcate Issues for Trial.**

On May 15, 2020 plaintiffs filed a complaint against defendants asserting causes of action for wrongful death and vicarious liability arising from a motor vehicle accident involving defendant Kirkpatrick and plaintiffs' decedent.

On August 11, 2021 the court denied defendant Lytx, Inc.'s motion for summary judgment finding that there remained a triable issue of material fact as to whether defendant Kirkpatrick was acting in the course and scope of employment and not merely commuting to work at the time of the subject accident as defendant Lytx, Inc. knowingly recruited him from Reno, mandated he work from San Diego, he was being compensated by defendant Lytx, Inc. to relocate, and was travelling from his former residence in Reno, Nevada to relocate to his place of employment in San Diego, California at the time of the subject accident.

On October 22, 2021 the Third District Court of Appeal denied defendant Lytx, Inc.'s petition for writ of mandate or prohibition related to the court's ruling on the motion for summary judgment.

Defendant Lytx, Inc. moves to bifurcate the issue of respondeat superior liability from the remaining issues in this case and to try that issue first. Defendant Lytx, Inc. argues: plaintiffs seek to hold defendant Lytx, Inc. liable for the subject motor vehicle accident on the ground that it was vicariously liable for defendant Kirkpatrick's conduct while he was relocating his residence in order to start his job with defendant Lytx, Inc.; defendant Lytx, Inc. can not be held liable in this case, because plaintiffs can not meet their burden to prove defendant Kirkpatrick was acting within the course and scope of his employment at the time of the subject accident; bifurcation is necessary and appropriate as it will avoid the substantial risk of prejudice and confusion that will result if the issues of defendant Lytx, Inc.'s liability and plaintiffs' damages are resolved at the

same time; bifurcation is appropriate to avoid unfair prejudice to defendant Lytx, Inc. due to the presentation of damages evidence related to loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support that allegedly arose due to the loss of plaintiffs' son, which will tend to elicit extreme sympathy from the jury creating a substantial risk that the jury may be inclined to award money to plaintiffs from defendant Lytx, Inc. regardless of fault; the interests of economy and efficiency is served by bifurcation as it could limit the time necessary for trial should the jury find that defendant Lytx, Inc. is not liable and no further trial as to defendant Lytx, Inc.'s liability will be required; and if it is determined defendant Lytx, Inc. is not liable, there will be one less attorney to examine each witness and any damages witnesses in the trial of the remaining issues, thereby likely expediting the trial for all parties.

Plaintiffs oppose the motion on the following grounds: bifurcation is a discretionary decision of the court, therefore, the court is not bound to grant defendant Lytx, Inc.'s request; defendant Lytx, Inc.'s arguments in support of the motion are specious; the jury instructions about awarding damages after a determination of liability are sufficient to avoid any sympathy factor from affecting the jury's decision of defendant Lytx, Inc.'s liability under a theory of respondeat superior; and plaintiffs will be prejudiced by bifurcation of the trial of the vicarious liability issue from the trial of damages, because plaintiffs would be forced to litigate two trials, potentially to two separate juries, thereby incurring additional costs and undue delay for justice.

Defendant Lytx, Inc. replied to the opposition.

Motion to Bifurcate Principles

"(a) 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. ¶ (b) The court, in furtherance of convenience or to

avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States." (Code of Civil Procedure, § 1048.)

When the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted, the court, after notice and hearing, may make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, or on its own motion at any time, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5. (Code of Civil Procedure, § 598.)

"Section 598 of the California Code of Civil Procedure, [Footnote omitted.] commonly known as the bifurcated trial rule, provides for determination of the negligence issue at a trial before evidence on the issue of damages is introduced. A principal reason for the rule is set out in *Trickey v. Superior Court*, 252 Cal.App.2d 650, 653, 60 Cal.Rptr. 761, 763, as follows: 'Code of Civil Procedure section 598 was adopted in 1963 as the result of Judicial Council recommendations. Its objective is avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff. (17th Biennial Report, Judicial Council (1959) p. 30; 18th Biennial Report (1961) pp. 56--57; 19th Biennial Report (1963) p. 32; see also Committee on Adm. of Justice Report, 36 St.Bar J. p. 416 (1961).)'" (Horton v. Jones (1972) 26 Cal.App.3d 952, 954-955.)

"The trial court had ample authority to make this discretionary decision. Aside from the language in Code of Civil Procedure section 598, which concerns pretrial motions, Evidence

Code section 320 provides that "[e]xcept as otherwise provided by law, the court in its discretion shall regulate the order of proof." Similarly, Code of Civil Procedure section 1048, subdivision (b) states that a trial court, "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action ... or of any separate issue or of any number of causes of action or issues...." Under these provisions, trial courts have broad discretion to determine the order of proof in the interests of judicial economy. (*Buran Equipment Co. v. H & C Investment Co.* (1983) 142 Cal.App.3d 338, 343-344, 190 Cal.Rptr. 878.)" (Grappo v. Coventry Financial Corp. (1991) 235 Cal.App.3d 496, 504.)

Under the totality of the circumstances presented, it appears appropriate to grant the motion. The issue of defendant Lytx, Inc. 's vicarious liability for the motor vehicle accident is a discrete and easily severable issue from the remaining issues to be tried in this case. The bifurcated trial of defendant Lytx, Inc.'s liability under a theory of vicarious liability/respondeat superior prior to the trial on the remaining issues concerning defendant Kirkpatrick's liability and damages incurred due to the death of plaintiff's decedent in the subject motor vehicle accident will be conducive to expedition and economy in this litigation as it could avoid the waste of time and money caused by the unnecessary consumption of time at trial by the participation of defendant Lytx, Inc.'s counsel during the trial of defendant Kirkpatrick's liability and damages issues if the trier of fact determines that defendant Lytx, Inc. was not liable for defendant Kirkpatrick's conduct and will avoid prejudice to defendant Lytx, Inc. from being exposed to undue prejudice from potential jury sympathy arising from the evidence of the damages the plaintiffs suffered due to their son's death that could potentially override their duty to determine liability of defendant Lytx, Inc. without considering the damages incurred by plaintiffs from the loss of their son,

Defendant Lytx, Inc.'s motion to bifurcate is granted.

**TENTATIVE RULING # 8: DEFENDANT LYTX, INC.'S MOTION TO BIFURCATE ISSUES FOR TRIAL IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**9. CASTANEDA v. SWANSON PC-20160161**

**Defendant Hansen's Motion to Dismiss Action for Failure to Bring the Matter to Trial within the Statutory Limitation Period as Extended.**

Plaintiff filed this action on April 4, 2016. Judicial Council Emergency Rule 10 provides that notwithstanding any other law, including Code of Civil Procedure, § 583.310, all civil actions filed on or before April 6, 2020 had a total time of five years and six months to bring the action to trial, which extended the time to bring this action to trial to October 4, 2021. On August 19, 2021 the El Dorado County Superior Court issued the 6th Administrative Order Granting Emergency Relief due to COVID-19 and the State of Emergency due to the Caldor Fire, which suspended civil jury trials during the period of August 20, 2021 and September 17, 2021, with trials to be set on or after September 21 2021. On September 14, 2021 the El Dorado County Superior Court issued the 7th Administrative Order Granting Emergency Relief due to COVID-19 and the State of Emergency due to the Caldor Fire, which suspended civil jury trials during the period of September 18, 2021 and October 18, 2021, with trials to be set on or after October 19, 2021. On January 18, 2022 the El Dorado County Superior Court issued the 8th Administrative Order Granting Emergency Relief due to COVID-19, which suspended civil jury trials during the period of January 19, 2022 to February 19, 2022, with trials to be set on or after February 20, 2022. On February 9, 2022 the El Dorado County Superior Court issued an Administrative Order suspending civil jury trials during the period of February 20, 2022 to March 21, 2022, with trials to be set on or after March 22, 2022, due to the local widespread condition of COVID-19 and the rising positivity rate in El Dorado County.

Defendant Hansen moves to dismiss the case on the ground that the case was not brought to trial within the statutorily mandated time. Defendant Hansen argues: there is no written stipulation executed by the parties to extend the five year period to bring the case to trial; or to

waive the right to mandatory dismissal; Emergency Order Number 10 extended the five year statute of limitations to bring this case to trial to October 4, 2021; the Court's 6th Administrative Order extended the time to bring the case to trial by 32 days; and the Court's 7th Administrative Order extended the time to bring the case to trial by 28 days; adding the total extensions of time to bring the action to trial set the new date to bring the action to trial as December 6, 2021; the action was not brought to trial by December 6, 2021; plaintiff did not make every reasonable effort to bring the case to trial by December 6, 2022, such as filing a motion to specially set the case for trial before the expiration of the limitation period as provided in Rules of Court, Rule 3.13.55; it is not required that defendant establish prejudice from the failure to timely try the case; and it is mandatory that the court dismiss this case under the provisions of Code of Civil Procedure, § 583.310.

While the parties, including defendant Hansen, stipulated to vacate the August 9, 2022 trial date and continue the trial date to January 17, 2023, which was entered as an order on December 17, 2021, the stipulation did not agree to extend the time within which this action must be brought to trial.

"The parties may extend the time within which an action must be brought to trial pursuant to this article by the following means: ¶ (a) By written stipulation. The stipulation need not be filed but, if it is not filed, the stipulation shall be brought to the attention of the court if relevant to a motion for dismissal. ¶ (b) By oral agreement made in open court, if entered in the minutes of the court or a transcript is made." (Code of Civil Procedure, § 583.330.)

There is a long-settled principle that it is a plaintiff's duty, rather than the trial court's, to keep track of critical dates. (See Cannon v. City of Novato (1977) 167 Cal.App.3d 216, 222.)

The Supreme Court stated: "As the *Cannon* court declared: '"The burden is upon the plaintiff to call to the attention of the court the necessity for setting the trial for a time within the period

fixed by [section 583]."' (*Cannon*, supra, 167 Cal.App.3d at p. 222, 213 Cal.Rptr. 132, quoting *Steinbauer v. Bondesen* (1932) 125 Cal.App. 419, 426, 14 P.2d 106.) This rule is well founded: the burden of keeping track of the relevant dates should properly fall on plaintiffs, because it is they who have the interest, and the statutory duty under section 583.310, to timely prosecute their cases." (Howard v. Thrifty Drug & Discount Stores (1995) 10 Cal.4th 424, 434.) It is the plaintiff's duty to keep track of the progress of the litigation and make sure that the trial date is scheduled prior to the expiration of the statutory time to try the case.

"An action shall be brought to trial within five years after the action is commenced against the defendant." (Code of Civil Procedure, § 583.310.)

"(a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article. ¶ (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute." (Code of Civil Procedure, § 583.360.)

"In computing the time within which an action must be brought to trial pursuant to this article, there shall be excluded the time during which any of the following conditions existed: ¶ (a) The jurisdiction of the court to try the action was suspended. ¶ (b) Prosecution or trial of the action was stayed or enjoined. ¶ (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile." (Code of Civil Procedure, § 583.340.)

The Law Revision Commission Comments to Section 583.340(c) states in relevant part: "Subdivision (c) codifies the case law "impossible, impractical, or futile" standard. The provisions of subdivision (c) must be interpreted liberally, consistent with the policy favoring trial on the merits. See Section 583.130 (policy statement). * * * ¶ Under Section 583.340 the time within which an action must be brought to trial is tolled for the period of the excuse, regardless whether

a reasonable time remained at the end of the period of the excuse to bring the action to trial. This overrules cases such as State of California v. Superior Court, 98 Cal.App.3d 643, 159 Cal.Rptr. 650 (1979), and Brown v. Superior Court, 62 Cal.App.3d 197, 132 Cal.Rptr. 916 (1976). [17 Cal.L.Rev.Comm. Reports 905 (1984)]."

"Under section 583.310 an action "shall be brought to trial within five years after the action is commenced against the defendant." Excluded from the computation is any period during which it was "impossible, impracticable, or futile" to bring the action to trial. (§ 583.340, subd. (c).) The Law Revision Commission Comment (1984 addition) notes that "[s]ubdivision (c) codifies the case law 'impossible, impractical, or futile' standard.... [Subdivision (c) ] recognizes that bringing an action to trial ... may be impossible, impracticable, or futile due to factors not reasonably within the control of the plaintiff." ¶ "The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case. [¶] The 'reasonable diligence' standard is an appropriate guideline for evaluating whether it was impossible, impracticable, or futile for the plaintiff to comply with [the five-year statute] due to causes beyond his or her control. [Citation.]" (*Moran v. Superior Court* (1983) 35 Cal.3d 229, 238, 197 Cal.Rptr. 546, 673 P.2d 216; *Santa Monica Hospital Medical Center v. Superior Court* (1988) 203 Cal.App.3d 1026, 1030, 250 Cal.Rptr. 384.) ¶ The exercise of reasonable diligence requires a plaintiff to " 'keep track of the pertinent dates which are crucial to maintenance of his lawsuit, and to see that the action is brought to trial within the five-year period.' " (*Taylor v. Hayes* (1988) 199 Cal.App.3d 1407, 1410, 245 Cal.Rptr. 613, quoting *Singelyn v. Superior Court* (1976) 62 Cal.App.3d 972, 975, 133 Cal.Rptr. 486.) The failure to monitor these dates does not constitute a cause beyond the plaintiff's control so as to trigger application of the impossible, impracticable or futile exceptions. (*Sizemore v. Tri–City Lincoln Mercury, Inc.* (1987) 190 Cal.App.3d 84, 89, 235 Cal.Rptr. 243 [plaintiff's miscalculation of time results in setting of trial

date beyond five-year period]; *Hill v. Bingham* (1986) 181 Cal.App.3d 1, 10, 225 Cal.Rptr. 905 [plaintiff fails to notify court of impending expiration of five-year period and acquiesces to trial date beyond the five-year mark]; *Taylor v. Hayes, supra,* 199 Cal.App.3d at p. 1411, 245 Cal.Rptr. 613 [same].) ¶ In the case before us, appellant simply neglected to keep track of time as the five-year period came to a close. His attempts to shift the blame onto respondent for failing to provide notice of the continued trial date are unavailing. It was appellant, after all, who requested the continuance. The exercise of reasonable diligence required his counsel to make some independent effort to determine whether the continuance had been obtained and, if so, to what date. This would have entailed no more than a telephone call to respondent's attorney or the clerk of the court. The failure to make this minimal effort constitutes lack of diligence, does not involve circumstances beyond appellant's control, and certainly does not rise to the level of impossibility, impracticability or futility. [Footnote omitted.]" (Emphasis added.) (Wilcox v. Ford (1988) 206 Cal.App.3d 1170, 1174–1175.)

There is no proof of service of notice of the hearing and a copy of the moving papers on plaintiff and the other defendants in the court's file. There is no opposition in the court's file.

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight

delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days…" (Code of Civil Procedure, § 1005(b).)

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service." (Rules of Court, Rule 3.1300(a).)

"Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." (Rules of Court, Rule 3.1300(c).)

At the time this tentative ruling was prepared, there was no proof of service in the court's file and the five court day period to file the proof of service had expired. The court can not rule on the merits of the motion as such a ruling would violate the fundamental principles of due process as it appears plaintiff and the other defendants have been deprived of notice and an opportunity to be heard on this motion.

The court has no alternative other than to deny the motion without prejudice due to lack of proof of service.

**TENTATIVE RULING # 9: DEFENDANT HANSEN'S MOTION TO DISMISS ACTION FOR FAILURE TO BRING THE MATTER TO TRIAL WITHIN THE STATUTORY LIMITATION PERIOD AS EXTENDED IS DENIED WITHOUT PREJUDICE DUE TO LACK OF PROOF OF SERVICE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**10. CARTOSCELLI v. ALLIED PROPERTY PC-20200041**

**(1) Plaintiff's Second Motion to Compel Further Responses to Special Interrogatories, Set Two.**

**(2) Plaintiff's Second Motion to Compel Further Responses to Requests for Production, Set Two.**

**TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 22, 2022 IN DEPARTMENT NINE.**

**11. BEAVER v. VRG PROPERTY MANAGEMENT PC-20210482**

**Motion to be Relieved as Counsel of Record for Plaintiff.**

**TENTATIVE RUING # 11: THE MOTION IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN**

**PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**12. ROSICK v. FINLEY PC-20200633**

**OSC Re: Failure to Appear at CMC and Failure to File Proof of Service.**

**TENTATIVE RULING # 12: THE ACTION HAVING SETTLED, THIS MATTER IS DROPPED FROM THE CALENDAR.**

**13. AUVINEN V. KRAMER 21UD0011**

**Demurrer to Complaint.**

Plaintiff filed a complaint for unlawful detainer against defendants alleging Chandra Kramer and Robert Kramer were served a 60 day notice to quit on August 3, 2021 by posting on the premises on that date, leaving a copy of the notice with a person found on the property, and by mailing a copy of the notice to defendants to the premises; the 60 day notice period expired on October 5, 2021; and defendants failed to comply with the requirement of the notice by that date.

Defendants demur to the complaint on the sole ground that the 60 day notice was void, because the notice merely states that the property will be removed from the market for at least 12 months and does not state it had actually been removed from the market at the time the 60 day notice was served. Defendants argue: that just cause for termination under of Civil Code, § 1179.05(3)(a) requires actual removal and not just merely an intent to remove the property from the market; and merely listing the real property for sale is not sufficient no-fault just cause for termination of the tenancy in that Code of Civil Procedure, § 1179.03.5(3)(A)(iii) provides that a contract for sale with a buyer who intends to occupy the property is required.

Plaintiff opposes the demurrer on the following grounds: the complaint alleges that the defendants are subject to a month-to-month rental of an single family home that is exempt from rent control, therefore, plaintiff is not required to prove just cause to terminate the tenancy; plaintiff has alleged the property will be removed from the rental market and whether the property is sold, left vacant, or demolished is not within the scope of the pleadings and not relevant to the action; the cause stated in the notice is true as the property is not offered for rent for the next 12 months; defendants have no standing to determine the use of the property after the tenancy has terminated; plaintiffs are entitled to an award of attorney fees as the demurrer is a bad faith tactic; and plaintiff requests that a trial be set in this case within 20 days as plaintiff is entitled to trial

within 20 days of a general appearance by answer or demurrer as provided in Code of Civil Procedure, § 1170.5.

There was no reply in the court's file at the time this ruling was prepared.

General Demurrer Principles

When any ground for objection to an answer appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '... "plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (Highlanders, Inc. v. Olsan (1978) 77 Cal.App.3d 690, 696-697.)

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

““To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.) Mistaken labels and confusion of legal theory are not fatal because the doctrine of "theory of the pleading" has long been repudiated in this state. (*Lacy v. Laurentide Finance Corp*., 28 Cal.App.3d 251, 256-257, 104 Cal.Rptr. 547.)" (Spurr v. Spurr (1979) 88 Cal.App.3d 614, 617.)

The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 870-871.)

““It has long been recognized that the unlawful detainer statutes are to be strictly construed and that relief not statutorily authorized may not be given due to the summary nature of the proceedings. [Citation.] The statutory requirements in such proceedings ‘ "must be followed strictly...." ’ " (*WDT–Winchester v. Nilsson* (1994) 27 Cal.App.4th 516, 526, 32 Cal.Rptr.2d 511; see *Underwood v. Corsino* (2005) 133 Cal.App.4th 132, 135, 34 Cal.Rptr.3d 542; *Cal–American Income Property Fund IV v. Ho* (1984) 161 Cal.App.3d 583, 585, 207 Cal.Rptr. 532.) "The remedy of unlawful detainer is a summary proceeding to determine the right to possession of real property. Since it is purely statutory in nature, it is essential that a party seeking the remedy bring himself clearly within the statute." (*Baugh v. Consumers Associates, Ltd.* (1966) 241 Cal.App.2d 672, 674, 50 Cal.Rptr. 822.) Because Dr. Leevil served the three-day notice to quit before it perfected title, it did not bring itself within the scope of section 1161a(b), as that provision is most naturally read, before taking the first step in the removal process that the statute

authorizes. Its notice to quit was, therefore, premature and void, and its unlawful detainer action, improper." (Dr. Leevil, LLC v. Westlake Health Care Center (2018) 6 Cal.5th 474, 480.)

Although the statutory requirements in unlawful detainer proceedings must be strictly followed as established by the facts alleged, in ruling on a demurrer, all of the alleged material facts in the complaint, including the facts appearing in exhibits attached to the complaint, that are applied to the strictly followed procedural requirements of unlawful detainer actions must be liberally construed and treated as true for the purposes of the demurrer to determine whether an unlawful detainer cause of action is stated wherein all procedural requirements were strictly adhered to. In short, the standard is not strictly construing the facts. The standard is strictly construing whether the liberally construed facts that are taken as true sufficiently allege strict compliance with the statutory requirements for an unlawful detainer action.

With the above cited principles in mind, the court will rule on the demurrer to the complaint.

60 Day Notice to Quit and Vacate Premises

"An owner of a residential dwelling giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination…" (Civil Code, § 1946.1(b).)

"(b) For purposes of this section, "just cause" includes either of the following: ¶ * * * (2) No-fault just cause, which includes any of the following: ¶ * * * (B) Withdrawal of the residential real property from the rental market…" (Civil Code, § 1946.2(b)(2)(B).)

"(a) Before October 1, 2021, a court may not find a tenant guilty of an unlawful detainer unless it finds that one of the following applies: ¶ * * * (3)(A) The unlawful detainer arises because of a termination of tenancy for any of the following: ¶ * * * (iii) The owner of the property has entered into a contract for the sale of that property with a buyer who intends to occupy the property, and all the requirements of paragraph (8) of subdivision (e) of Section 1946.2 of the Civil Code have been satisfied." (Code of Civil Procedure, § 1179.03.5(a)(3)(A)(iii).)

Attached to the Judicial Council Form complaint is the 60 day notice allegedly served on defendants. It expressly states: "1) the property will be removed from the rental market for at least 12 months. ¶ 2) Removal of the premises from the rental market is just cause for termination and an exemption from the moratorium on evictions as provided under Civil Code Section 1946.2(b)(2)(B)." (See Complaint, Exhibit 2 – 60-DAY NOTICE TO QUIT AND VACATE PREMISES.)

No-fault just cause for termination of a tenancy includes withdrawal of the residential real property from the rental market. (Civil Code, § 1946.2(b)(2)(B).) Plaintiff provided notice that the property is being withdrawn from the rental market. Defendants' argument that actual removal is mandated by the language "Withdrawal of the residential real property from the rental market" where there remains tenants in possession that are renting the property is not a reasonable construction of that statutory language. To accept defendants' interpretation the absurd result will be a landlord would never be able to use Section 1946.2(b)(2)(B) as a grounds for notice of termination of tenancy, because at the time of the notice the tenants remain in possession and the property remains in the rental market as it is being rented.

"'The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.]' (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645, 335 P.2d 672.) In determining that intent, we first examine the words of the statute itself. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698, 170 Cal.Rptr. 817, 621 P.2d 856.) Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) If the language of the statute is clear and unambiguous, there is no need for construction. (Ibid.) However, the 'plain meaning' rule does not prohibit a court from determining

whether the literal meaning of a statute comports with its purpose. (Ibid.) If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*People v. Coronado* (1995) 12 Cal.4th 145, 151, 48 Cal.Rptr.2d 77, 906 P.2d 1232.) '"We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]' (Ibid.) The legislative purpose will not be sacrificed to a literal construction of any part of the statute. (*Select Base Materials v. Board of Equal.*, supra, 51 Cal.2d at p. 645, 335 P.2d 672.)" (Bodell Const. Co. v. Trustees of California State University (1998) 62 Cal.App.4th 1508, 1515-1516.)

"Because the language of a statute is generally the most reliable indicator of the Legislature's intent, we look first to the words of the statute, giving them their ordinary meaning and construing them in context. If the language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. (*Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 818, 31 Cal.Rptr.3d 591, 115 P.3d 1233; *People v. Braxton* (2004) 34 Cal.4th 798, 810, 22 Cal.Rptr.3d 46, 101 P.3d 994.)" (People v. Hudson (2006) 38 Cal.4th 1002, 1009.)

Giving the language its ordinary meaning and construing the words in context, withdrawal of the residential real property from the rental market necessarily contemplates that withdrawal from the market will necessarily occur after the eviction of the current tenant, otherwise the real property remains in the rental market as it is occupied by tenants. To construe the language as mandating actual removal from the market before providing a notice of the property being withdrawn from the market would render that entire subdivision, Civil Code, § 1946.2(b)(2)(B), inoperative and mere surplusage.

Furthermore, the provisions of Code of Civil Procedure, § 1179.03.5(a)(3)(A)(iii) related to termination of the tenancy due to the property being under contract for sale by a buyer who intends to occupy the property, and all the requirements of paragraph (8) of subdivision (e) of Section 1946.2 of the Civil Code have been satisfied is inapplicable under the facts pled in the complaint. The 60 day notice to quit makes no mention that the tenancy was being terminated due to an impending sale and the facts and circumstances alleged in the complaint, which must be taken as true for the purpose of demurrer, do not raise such an issue. A defendant is not free to demur to a complaint on an assertion of facts that are not alleged in the complaint and not the subject of judicial notice.

Treating as true all of the complaint's material factual allegations and construing the complaint liberally to determine whether a cause of action has been stated and considering the facts appearing in exhibits attached to the complaint, given the assumed truth of the facts pleaded, for the purposes of demurrer (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.), the court finds that plaintiff has adequately alleged a valid 60 day notice was served on defendants and an unlawful detainer cause of action. The demurrer is overruled.

Plaintiff's request for an award of attorney fees and costs as a sanction against defendants is denied as the court has no properly noticed and briefed motion for sanctions before it and considering such sanctions under such circumstances would violate defendants' fundamental right to due process.

Plaintiff further requests that the court set trial within 20 days.

"If the defendant appears pursuant to Section 1170, trial of the proceeding shall be held not later than the 20th day following the date that the request to set the time of the trial is made. Judgment shall be entered thereon and, if the plaintiff prevails, a writ of execution shall be issued immediately by the court upon the request of the plaintiff." (Code of Civil Procedure, § 1170.5(a).)

"On or before the day fixed for his appearance, the defendant may appear and answer or demur." (Code of Civil Procedure, § 1170.)

Defendants appeared by demur. Therefore, Section 1170.5(a) requires the court to set a trial date within 20 days of plaintiff's request

**TENTATIVE RULING # 13: DEFENDANTS' DEMURRER TO THE COMPLAINT IS OVERRULED. PLAINTIFFS' REQUEST FOR SANCTIONS IS DENIED. DEFENDANTS SHALL FILE AND SERVE THEIR ANSWER TO THE COMPLAINT WITHIN FIVE DAYS. NO HEARING ON THE DEMURRER WILL BE HELD. (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN**

**WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**14. DUDUGJIAN v. WELLS FARGO BANK PC-20210060**

**Plaintiff's Motion for Summary Judgment.**

**TENTATIVE RULING # 14: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY APRIL 15, 2022 IN DEPARTMENT NINE.**

**15. CHRISTINE CAIN V. CHERYL MENDONSA ET AL PC 20190308**

The tentative ruling was set on February 28, 2021.

**TENTATIVE RULING # 15: THIS MATTER IS DROPPED FROM THE CALENDAR.**

**16. JORDANA WEBER V JASON TORRES SFL 20190173**

"When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (Code of Civil Procedure § 1008(a).)[1]

Pending is petitioner's timely motion for reconsideration of the court's October 29, 2021, Ruling (served Nov. 1, 2021). Included with the motion is a declaration from Patrick Ellis, an expert in Digital Forensic Consultant. There are new facts stated in the declaration. Therefore, the court will consider the motion for reconsideration.

The court allowed the prior petitioner's and respondent's experts to testify again regarding the Cellebrite report on August 4, 2021. The trial started on March 9, 2021, and went through August 24, 2021, with twelve days[2] of trial. Respondent orally asked to have another expert witness, Patrick Ellis, on August 4, 2021, to provide the raw data from the petitioner's Dell computer and a backup drive to the respondent's attorney and child's attorney. The respondent's attorney objected to allow a new expert witness.

The cutoff date for all discovery is 30 days before the trial, to include expert witnesses, irrespective of continuances. (§ 2024.020.) The trial court must exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to list the witness as an expert, submit an expert declaration, produce reports and writings of expert witnesses, or failed to make the expert available for a deposition. (§ 2034.300(a)–(d).) An exchange of

[1] All undesignated statutory references are to the Code of Civil Procedure.
[2] March 9, 10, 11, 16–18; June 10, 11, 16; July 19; August 4 and 24.

information concerning expert witnesses may be demanded in advance of the discovery cutoff date, to allow the opposing attorney to depose the expert witness. The demand must be served no earlier than the setting of the initial trial date and "no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date." (§ 2034.220.)

"Failure to comply with expert designation rules may be found to be "unreasonable" when a party's conduct gives the appearance of gamesmanship, such as undue rigidity in responding to expert scheduling issues. (*Stanchfield v. Hamer Toyota, Inc.* (1995) 37 Cal.App.4th 1495, 1504.) The operative inquiry is whether the conduct being evaluated will compromise these evident purposes of the discovery statutes: " 'to assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise. [Citation.]' [Citation.]" (*Id.* at p. 1504 [holding that court did not abuse its discretion in allowing expert testimony].)

In *Staub v. Kiley* (2014) 226 Cal.App.4th 1437, the Third Appellate District stated that the record in that case did "not support a determination that plaintiffs so unreasonably failed to timely disclose their experts that exclusion of all expert testimony was warranted. Neither plaintiffs nor their counsel engaged in actions that can be characterized as gamesmanship, nor did they engage in a 'comprehensive attempt to thwart the opposition from legitimate and necessary discovery,' justifying exclusion of evidence." (*Id.* at p. 1447.) In *Staub*, "Plaintiffs' counsel averred he did not determine to change experts (from Kang to Fullerton and Ley) until November 2011, but then had difficulty reaching them over the December 2011 holidays and as a result of Ley's travelling in Spain, was not able to designate them until after the first week in January 2012, close to two weeks after the exchange date contained in the demand. Moreover, shortly after the

exchange, plaintiffs offered to make the experts available for deposition, an offer defendants promptly declined. [Citation.] While counsel's late arrangements for experts are not evidence of an ideal practice, they do not show an attempt to thwart defendants' discovery." (*Ibid*.)

In *Cottini v. Enloe Medical Center* (2014) 226 Cal.App.4th 401, the Third Appellate District stated that an expert witness "disclosure, while late, was made *before* the close of expert witness discovery. Cottini does not argue he would not have had sufficient time to depose Enloe's experts had he been pursuing discovery rather than his meritless disqualification motion. Cottini's disclosure, on the other hand, was made after the close of expert witness discovery, providing no opportunity for Enloe to depose Cottini's experts. In this case where the importance of discovery of experts is manifest, allowing Cottini's expert witnesses to testify without any ability for Enloe to depose these witnesses would be the essence of unfair surprise. [Citation.] The trial court had inherent authority to exclude the testimony of Cottini's expert witnesses and did not abuse its discretion in exercising this authority based on the facts of this case." (*Id.* at p. 426.)

Petitioner's attorney made an oral argument to call a new expert witness on the last day of trial, August 4, 2020.[3] Petitioner wanted to give raw data to the other attorneys.

The court has discretion to exclude expert testimony. The discovery cutoff is 30 days prior to trial. (§§ 2024.020, 2034.220.) There were no reports or writings produced, no declaration from Mr. Ellis, and he was not made available for a deposition prior to petitioner's request. (§ 2034.300 (a)-(d).) In short, petitioner did not comply with the discovery statutes concerning expert witnesses. This was late into the trial. The parties needed resolution and having Mr. Ellis testify as an expert would have delayed the trial. Petitioner had two IT expert witnesses that testified in this trial and an IT expert, Mr. Burgess, that testified in the trial on March 26, 2020.

[3] The court reasoned that the trial ended on August 4, 2021; however, there were 2 hours on testimony on August 24, 2021.

The court heard from three expert witnesses in this trial and read transcripts from two IT expert witnesses.

The court read the declaration of Mr. Ellis; however, the attorneys did not cross-examine him. Even assuming, arguendo, the court believes Mr. Ellis's declaration is true, the court finds that, alternatively, petitioner still has not shown by a preponderance of the evidence that respondent abused Ms. Kline. (Fam. Code § 6203(a)–(b).)

Refer to the court judgment filed on October 29, 2021. (Sullivan Judgment p. 4:5 – 6:2.) Mr. Ellis did extract from petitioner's Dell computer or the back-up, and not petitioner's iPhone. The best extraction is from the iPhone. Mr. Cook, expert extracted from respondent's iPhone and was not any of the evidence in respondent's iPhone of threats to her, her family, and other corroboration of respondent's DV. (Pet. Exs. 50, 53, 54, 56, 57, 59–61, 66–69, 73.) Petitioner could use an application for a "layperson" and "use the term authentic" and it would be "fooled" on Cellbrite report even if you extracted by petitioner's iPhone.

**TENTATIVE RULING # 16: PETITIONER MOTION FOR RECONSIDERATION IS DENIED. RESONDENT MOTION FOR SANCTIONS IS DENIED. NO HEARING WILL BE HELD (<u>LEWIS V. SUPERIOR COURT</u> (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MARCH 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**17. JESSICA ETHLEEN ORMAN V. HARLAND WADE HARMON PFL 20180755**

**Petitioner Motion to Termination Therapeutic Reunification**

There was service by fax for an ex parte motion for the January 26, 2022. There is no service for this motion to the respondent. Respondent did not file an opposition.

The Sacramento Superior Court issued a criminal protective order ("CPO") on Jan. 7, 2022, which includes the children. The box is not checked on 14 of the CPO. The CPO orders prevails over the family law orders. The El Dorado Superior court cannot enforce the petitioner to comply with the family therapeutic reunification. The court will not remove the therapeutic reunification orders; however, the CPO will be enforced.

**TENTATIVE RULING # 17: THE EL DORADO COURT REMOVE THE THERAPEUTIC REUNIFICATOIN ORDERS; HOWEVER, THE CPO WILL BE ENFORCED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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**

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**18. KIMBERLY R. ERIKSEN V. TRAVIS L. ERIKSEN PFL 20160241**

**Motion to Dismiss**

The equitable doctrine of estoppel fully applies to motion to dismiss for failure to comply with the 5-year statute. (Greene v. State Farm Fire & Cas. Co. (1990) 224 Cal.App.3rd 1583.) An action shall be brought to trial within five years after the action is commenced against the defendant. (Cal. Code of Civil Procedure §583.310.) The respondent appeared on October 22, 2021, for the Case Management Conference. Respondent did not file an answer. There has been no activity for five years and the petitioner does not prosecute this case. (Ca. Code of Civil Procedure §583.310.) The respondent did not serve the plaintiff for the Case Management Conference.

**TENTATIVE RULING # 18: THE CASE IS DISMISSED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND 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. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. 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 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**

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