1. SMATTER OF STREMSTERFER 22CV0213

OSC Re: Name Change.

TENTATIVE RULING # 1: THE PETITION IS GRANTED.

2. MATTER OF MCPHERSON AND ARNEY 22CV0187

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 8, 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.

3. KUMAR v. FLORES PC-20210349

Respondent Flores' Motion for Attorney Fees.

On July 8, 2021, petitioner filed a request for civil harassment restraining order against respondent Flores. Trial was held on the request on October 5, 2021. After finding that there was no clear and convincing evidence to support a restraining order the court denied the request for restraining order. On January 3, 2022, respondent Flores filed a motion for an award of attorney fees incurred to defend against the request in the amount of $7,260.

The proof of service declares that notice of the hearing and the moving papers were served on petitioner Kumar's counsel by mail on January 3, 2022. At the time this tentative ruling was prepared there was no opposition in the court's file

Recovery of Fees in Civil Harassment Action

"The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." (Code of Civil Procedure, § 527.6(s).)

In rejecting a plaintiff's argument that attorney fees may only be awarded to a prevailing defendant in a civil harassment action where the action was filed frivolously, or in bad faith, an appellate court held: "…[S]ection 527.6(i) states that the prevailing party "may" be awarded attorney fees. The normal rule of statutory construction is that when the Legislature provides that a court or other decisionmaking body "may" do an act, the statute is permissive, and grants discretion to the decisionmaker. (See, e.g., *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 569, 133 Cal.Rptr.2d 749; *Woodbury v. Brown–Dempsey* (2003) 108 Cal.App.4th 421, 433, 134 Cal.Rptr.2d 124.) Appellant has not convinced us, through statutory analysis or legislative history, that a different rule of construction should apply to Section 527(i). Accordingly, we conclude that the decision whether to award attorney fees to a prevailing party—plaintiff or defendant—under section 527.6(i) is a matter committed to the discretion of the trial court." (Krug

v. Maschmeier (2009) 172 Cal.App.4th 796, 802.) The costs and attorney's fee provision are now found in Section 527.6(s).

Respondent Flores prevailed on the case and is entitled to consideration of whether to award him attorney fees incurred to defend against the action.

"It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court, whose decision cannot be reversed in the absence of an abuse of discretion. (*La Mesa-Spring Valley School Dist. v. Otsuka*, 57 Cal.2d 309, 316, 19 Cal.Rptr. 479, 369 P.2d 7; *Horn v. Swoap*, 41 Cal.App.3d 375, 386, 116 Cal.Rptr. 113; *Excelsior etc. School Dist. v. Lautrup*, 269 Cal.App.2d 434, 447, 74 Cal.Rptr. 835.) The value of legal services performed in a case is a matter in which the trial court has its own expertise. (*Excelsior etc. School Dist. v. Lautrup*, supra at p. 448, 74 Cal.Rptr. 835.) The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. (*Barlin v. Barlin*, 156 Cal.App.2d 143, 149, 319 P.2d 87; *Mitchell v. Towne*, 31 Cal.App.2d 259, 266, 87 P.2d 908.) The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case. (*La Mesa-Spring Valley School Dist. v. Otsuka*, supra; *Excelsior etc. School Dist. v. Lautrup*, supra, 269 Cal.App.2d at p. 447, 74 Cal.Rptr. 835.)" (Melnyk v. Robledo (1977) 64 Cal.App.3d 618, 623-624.)

"Correctly stated, the rule is that when the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value. [Footnote omitted.] (See, e. g., *Lipka v. Lipka*, supra, 60 Cal.2d at p. 480, 35 Cal.Rptr. 71, 386 P.2d 671; *Elconin v. Yalen*, 208 Cal. 546, 549-550, 282 P. 791; *Kirk v. Culley*, 202 Cal. 501, 508-509, 261 P. 994; *Spencer v. Collins*, 156 Cal. 298, 307, 104 P. 320; *Patten v.*

Pepper Hotel Co., supra, 153 Cal. at p. 472, 96 P. 296; *Estate of Straus*, 144 Cal. 553, 557-558, 77 P. 1122; *Peyre v. Peyre*, supra, 79 Cal. at pp. 339-340, 21 P. 838; *Jones v. Jones*, supra, 135 Cal.App.2d at p. 64, 286 P.2d 908 (see fn. 3, Ante); see also, 1 Witkin, Cal. Procedure (2d ed. 1970) Attorneys, s 97, pp. 106-107.)" (In re Marriage of Cueva (1978) 86 Cal.App.3d 290, 300–301.)

"The use of the lodestar method for calculating attorney fees was established in California in Serrano III. As we recently noted, "[i]n so-called fee shifting cases, in which the responsibility to pay attorney fees is statutorily or otherwise transferred from the prevailing plaintiff or class to the defendant, the primary method for establishing the amount of 'reasonable' attorney fees is the lodestar method. The lodestar (or touchstone) is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Lealao*, supra, 82 Cal.App.4th 19, 26, 97 Cal.Rptr.2d 797.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735.) Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis. (Lealao, supra, at pp. 49-50, 97 Cal.Rptr.2d 797.)" (Thayer v. Wells Fargo Bank, N.A. (2001) 92 Cal.App.4th 819, 833.)

Under the totality of the circumstances presented, it appears appropriate to award respondent Flores the reasonable amount of attorney fees incurred in defending against this action.

Respondent has filed the declarations of both of his counsels. The declarations of counsel do not set forth any facts to justify each attorney billing for the joint time each of them spent in consultations within themselves, joint conferences with respondent, joint preparation of both counsels for trial, and both counsels appearing for trial. The court finds that payment of hourly charges for two attorneys at every step of the case is unreasonable. Absent opposition, the court finds that the reasonable amount of attorney fees incurred in the defense of this action is $4,494.75. The court grants the motion and awards respondent Flores $4,494.75.

Petitioner Kumar appeared at the hearing on February 25, 2022. Defendant did not appear. Mr. Kumar stated he had not read the tentative ruling and was provided a copy of the tentative ruling. After trailing the matter to allow him to read the ruling, the case was recalled. The court advised Mr. Kumar that he cannot argue the matter until he has notified the other side of his request to present argument. The hearing was continued to April 8, 2022, and Mr. Kumar was instructed to give respondent's/defendant's counsel notice by phone, text, or email of his request for oral argument and the continuance. The February 25, 2022, minute order continuing the hearing was served by mail to plaintiff/petitioner and respondent's/defendant's counsel and co-counsel on February 25, 2022.

At the time this ruling was prepared there was no proof in the court's file that Mr. Kumar served notice on respondent's/defendant's counsel that Mr. Kumar requests oral argument.

TENTATIVE RULING # 3: RESPONDENT FLORES' MOTION FOR ATTORNEY FEES IS GRANTED. RESPONDENT FLORES IS AWARDED $4,494.75 IN ATTORNEY FEES PAYABLE BY PETITIONER KUMAR. 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 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 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. 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, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

4. AMERICAN EXPRESS BANK v. VANACORE PC-20170097

Plaintiff's Motion to Vacate Dismissal and Enter Judgment Pursuant to Code of Civil Procedure, § 664.6.

On September 22, 2017, plaintiff and defendant entered a written stipulation for conditional entry of judgment settling the case. It appears that the individual parties executed the agreement. The parties agreed that the court reserved personal and subject matter jurisdiction to enforce the settlement until the settlement is fully performed and that the matter may be dismissed pursuant to Code of Civil Procedure, § 664.6. On November 2, 2017, the court dismissed the action pursuant to the written stipulation for conditional entry of judgment and retained jurisdiction pursuant to the provisions of Code of Civil Procedure, § 664.6 to enforce the written stipulation for conditional entry of judgment.

Plaintiff moves to vacate the dismissal and enter judgment pursuant to the terms of the settlement agreement on the following grounds: defendant agreed to pay $80,263.83 in monthly payments; while defendant has paid $48,000 toward the settlement amount, defendant has failed to make any payments on the remaining settlement balance; plaintiff emailed defendant notice of the default and informed him of the time to cure the default as provided in the settlement agreement; defendant did not cure the default; and according to the terms of the agreement, plaintiff is entitled to entry of judgment in the amount of $32,263.83, plus costs of suit.

The proof of service declares that on February 22, 2022, notice of the hearing and the moving papers were served by mail and email on defendant Vanacore. There was no opposition to the motion in the court's file at the time this ruling was prepared.

The court may enter judgment pursuant to the terms of a settlement agreement and if requested by the parties, retain jurisdiction to enforce the settlement. (Code of Civil Procedure, § 664.6.)

Section 664.6 was enacted to provide a summary procedure for enforcing settlement agreements. In order to be enforceable under that statute, the settlement agreement must be either entered orally before a court or must be in writing and signed by the parties. (Weddington Productions, Inc. v. Flick (1998) 60 Cal.App.4th 793, 810.) The written settlement agreement must be signed by the parties themselves (Levy v. Superior Court (1995) 10 Cal.4th 578, 585-586.) and must be signed by the individual parties seeking enforcement and the individual parties against whom enforcement is sought. (Harris v. Rudin, Richman & Appel (1999) 74 Cal.App.4th 299, 305.)

"Section 664.6 states that if the parties to pending litigation enter into a settlement either in a writing signed by the parties or orally before the court, the court, upon a motion, may enter judgment pursuant to the terms of the settlement. [Footnote Omitted.] The court retains jurisdiction to enforce a settlement under the statute even after a dismissal, but only if the parties requested such a retention of jurisdiction before the dismissal. (*Ibid.*) Such a request must be made either in a writing signed by the parties or orally before the court. (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439–440, 118 Cal.Rptr.2d 502.)" (Hines v. Lukes (2008) 167 Cal.App.4th 1174, 1182.)

The parties agreed that defendant would pay $80,263.83, plus $585 in court costs; the court reserved personal and subject matter jurisdiction to enforce the settlement until the settlement is fully performed; and that the matter may be dismissed pursuant to Code of Civil Procedure, § 664.6. (Declaration of Brian P. McGurk, Exhibit A – Stipulation for Conditional Entry of Judgment, paragraphs 1 and 4.)

Plaintiff's counsel declares on September 22, 2017 plaintiff and defendant entered into a written stipulation for conditional entry of judgment settling the case; defendant agreed to pay $80,848.83, which included the court costs, in monthly payments; while defendant has paid $48,000 toward the settlement amount, defendant has failed to make any payments on the remaining settlement balance; plaintiff emailed defendant notice of the default and informed him of the time to cure the default as provided in the settlement agreement; and defendant did not cure the default. (Declaration of Brian P. McGurk, paragraphs 4, 5, and 8-10.)

A memorandum of costs was filed on March 3, 2022, which claimed $675 in costs incurred in this litigation for filing and motion fees and fees for electronic filing or service. The poof of service declares that the memo of costs was served by mail on defendant Vanacore on February 22, 2022.

It appears appropriate under the circumstances presented to grant the motion, vacate the dismissal, and enter judgment in favor of plaintiff and against defendant Vanacore in the amount of $32,263.83, plus costs of suit of $675.

TENTATIVE RULING # 4: PLAINTIFF'S MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT PURSUANT TO CODE OF CIVIL PROCEDURE, § 664.6 IS GRANTED. THE COURT ORDERS THE DISMISSAL VACATED AND JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT VANACORE IN THE AMOUNT OF $32,263.83, PLUS COSTS OF SUIT OF $675. 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 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 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. 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, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

5. CALIFORNIA HYDRONICS CORP. v. DIV 15 TECH PC-20210490

Plaintiff's Application for Right to Attach Order and Writ of Attachment.

On September 1, 2021, plaintiff filed a complaint against defendant Dvi 15 Tech, a California Corporation asserting causes of action for breach of contract, common count, and quantum meruit allegedly arising from agreements in the form of purchase orders and failure to make payments due and owing in the amount of $73,135.19.

Plaintiff seeks issuance of a writ of attachment of any of the defendant's property as it is not a natural person in the total amount of $251,938, representing $5,000 in estimated costs and $121,300 in estimated attorney fees to prosecute the action. The declaration filed in support of the verified application states: declarant is the CFO of plaintiff; plaintiff is a California Corporation doing business as a hydronics supplier and contractor, duly licensed by the State of California; a copy of defendant's credit application is attached as Exhibit A; in approximately 2019 defendant purchased a pump skid from plaintiff by submitting a purchase order, a true and correct copy is attached as Exhibit B; the pump skid identified in Exhibit B was delivered to the construction project on September 29, 2019 as confirmed by the bill of lading from the shipper, a true and correct copy being attached as Exhibit C; true and correct copies of pump skid related invoices are attached as Exhibits D-F; and while plaintiff has issued one credit in the amount of $89.10 related to the pump skid, plaintiff has not been paid in full for the pump skid and there remains $73,135.59 unpaid by defendant. (Declaration of Curtis Roe in Support of Application, paragraphs 2-10; and Exhibits A-F.)

Plaintiff's counsel declares plaintiffs have so far incurred $9,555.50 in attorney fees and $1,111.25 in costs; and it is estimated that plaintiff will incur $101,300 in additional attorney fees and an additional $5,000 in costs, which includes trial preparation and trial time for two attorneys. (Declaration of M. Jonathan Robb, Jr in Support of Application, paragraphs 2-4.)

"Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this article for a right to attach order and a writ of attachment by filing an application for the order and writ with the court in which the action is brought." (Code of Civil Procedure, § 484.010.)

Defendant filed its answer to the complaint on November 2, 2021.

The proof of service filed with the court declares that defendant was served the documents related to the hearing on the application for writ of attachment by email on February 14, 2022.

The date and time of hearing appears to have been assigned by the clerk when the papers were filed on February 16, 2022. Therefore, the document served on defense counsel on February 14, 2022, could not have noticed the date and time of the hearing on April 8, 2022. An amended notice of hearing was filed on February 22, 2022, which stated the hearing would take place on April 8, 2022, at 8:30 a.m. in Department Nine. The proof of service attached to the amended notice declares that "**PLAINTIFF'S NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE**" was served by email to defense counsel on February 17, 2022. (Emphasis in original.)

This needs to be clarified under oath by a corrected proof of service if it is a clerical error. Otherwise, the court has insufficient evidence to establish defendant was provided sufficient notice of the hearing date and time and cannot rule on the merits of the application

There was no opposition to the application in the court's file at the time this ruling was prepared. Should it be established that the amended notice was served on the defendant, due to the defendant's failure to file and serve an opposition no later than five court days prior to the hearing, the defendant would not be permitted to oppose the issuance of the order. (Code of Civil Procedure, § 484.060(a).)

Pursuant to Code of Civil Procedure, § 484.090 in order to issue an order of attachment, the court must find all of the following: (1) The claim upon which the attachment is based is one upon which an attachment may be issued; (2) the applicant has established the probable validity of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the request for attachment is based; and (4) the amount to be secured by the attachment is greater than zero. In order to establish the probable validity of the claim, the applicant must show that it is more likely than not it will obtain a judgment against the defendant on its claim. (Code of Civil Procedure, § 481.190.) "Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees." (Code of Civil Procedure, § 483.010(a).)

"The following property of the defendant is subject to attachment: ¶ (a) Where the defendant is a corporation, all corporate property for which a method of levy is provided by Article 2 (commencing with Section 488.300) of Chapter 8…" (Code of Civil Procedure, § 487.010(a).)

"Except as provided in paragraph (2) of subdivision (a) of Section 3439.07 of the Civil Code, the following property is exempt from attachment: ¶ (a) All property exempt from enforcement of a money judgment. ¶ (b) Property which is necessary for the support of a defendant who is a natural person or the family of such defendant supported in whole or in part by the defendant. ¶ (c) "Earnings" as defined by Section 706.011. ¶ (d) All property not subject to attachment pursuant to Section 487.010." (Code of Civil Procedure, § 487.020.)

"In determining the probable validity of a claim where the defendant makes an appearance, the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation. (Law Revision Commission Comment to

section 481.190.)" (Loeb & Loeb v. Beverly Glen Music, Inc. (1985) 166 Cal.App.3d 1110, 1120.) Therefore, the burden is on the moving party to establish grounds for an order of attachment. (Loeb and Loeb, supra at page 1120; Pos-A-Traction, Inc. v. Kelly-Springfield Tire Co., Div. of Goodyear Tire & Rubber Co. (2000) 112 F.Supp.2d 1178, 1181.) "The application shall be supported by an affidavit showing that the plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based." (Code of Civil Procedure, § 484.030.) A verified complaint that satisfies the requirements of Section 482.040 may be used in lieu of or in addition to an affidavit. (Code of Civil Procedure, § 482.040.) The opposition shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. (Code of Civil Procedure, § 484.060(a).) Since attachment is a purely statutory remedy, it is subject to strict construction. (Jordan-Lyon Productions, Ltd. v. Cineplex Odeon Corp. (1994) 29 Cal.App.4th 1459, 1466.)

The court questions why two attorneys are required to prepare for and appear at the trial of this action. Therefore, the estimated future attorney fees for trial would appear be more reasonable if the estimate was cut in half to $34,650. This would result in a claim for $9,555.50 in current attorney fees, $1,111.25 in current costs, $66,650 in estimated additional attorney fees, and additional estimated costs in the amount of $5,000 in costs.

This would amount to a claim to be secured by the attachment in the amount of $155,425.32.

While an unopposed application appears to justify issuance of a right to attach order and writ of attachment in the amount of $155,425.32, the court cannot rule on the merits of the application until the issue of service of the amended notice has been resolved.

Undertaking Required

Before the issuance of a writ of attachment the plaintiff is required to file an undertaking to compensate the defendant any amount the defendant may recover for any wrongful attachment

by the plaintiff. (Code of Civil Procedure, § 489.210.) The undertaking shall be $10,000. (Code of Civil Procedure, § 489.220(a).) That amount may be increased upon objection to the undertaking and the court finding that the probable recovery for a wrongful attachment exceeds the amount of the undertaking. (Code of Civil Procedure, § 489.220(b).)

Should adequately proof of service of notice be submitted and the application granted, the court is inclined to set the undertaking is set as $10,000, subject to objection and evidence that the undertaking is insufficient.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 8, 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.

6. RENNER v. COOK PC-20190261

Motion to be Relieved as Counsel of Record for Plaintiff.

TENTATIVE RULING # 6: 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, APRIL 8, 2022, EITHER IN

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

7. COUNTY OF EL DORADO v. EDC INDUSTRIAL DEVELOPMENT, INC. PC-20210241

Hearing Re: Default Judgment.

On May 5, 2021, plaintiff County filed an eminent domain action against the defendant corporation as the record owner of the subject property. On August 31, 2021, the court entered an order authorizing the County to serve the California Secretary of State with the summons and complaint as the defendant is a dissolved corporation with no officer, director, or person having charge of the corporation and any agent upon whom process might be served can be found with due diligence. The proof of service of the summons and complaint filed on November 2, 2021, declares that the Secretary of State was served by personal service on September 20, 2021. Default was entered against defendant El Dorado County Industrial Development Corp., Inc., a Dissolved California Corporation on November 3, 2021.

A notice of Deposit of Probable Amount of Compensation was filed on February 23, 2022. The County states it deposited $1,000 as probable compensation for the portion of the parcel that the County seeks to take by eminent domain, which was appraised as being worth $801 for .16 acres zoned for light industrial use. The proof of service declares that the notice of deposit was served on the Secretary of State by mail on February 18, 2022.

After default the plaintiff may apply to the court for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff and shall render judgment in his or her favor for such sum not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by such evidence to be just. (Code of Civil Procedure, § 585(b).)

The Third District Court of Appeal has held: “A defendant's failure to answer the complaint has the same effect as admitting the well-pleaded allegations of the complaint, and as to these admissions *no further proof of liability is required.* (§ 431.20, subd. (a); *Kim, supra,* 201

Cal.App.4th at pp. 281–282, 133 Cal.Rptr.3d 774.) Thus, in a default situation such as this, if the complaint properly states a cause of action, the only additional proof required for the judgment is that needed to establish the amount of damages. (See *Beeman v. Burling, supra,* 216 Cal.App.3d at p. 1597, 265 Cal.Rptr. 719; see also *Ostling v. Loring, supra,* 27 Cal.App.4th at p. 1745, 33 Cal.Rptr.2d 391.) ¶ "The 'well-pleaded allegations' of a complaint refer to ' " 'all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " ' [Citations.]" (*Kim, supra*, 201 Cal.App.4th at p. 281, 133 Cal.Rptr.3d 774.) A well-pleaded complaint "set[s] forth the ultimate facts constituting the cause of action, not the evidence by which plaintiff proposes to prove those facts." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211–212, 197 Cal.Rptr. 783, 673 P.2d 660, fn. omitted; see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550, 67 Cal.Rptr.3d 330, 169 P.3d 559 ["[T]he complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts."].)" (Carlsen v. Koivumaki (2014) 227 Cal.App.4th 879, 898.)

Counsel for plaintiff declares the record owner of the subject property is defendant El Dorado County Industrial Development Corp., Inc., which has been dissolved since 1978; a written offer for the full appraised value was sent to the address listed on the last equalized county assessment roll for the owner, but the offer was returned as undeliverable; the County has been unable to locate a living representative of the owner; since the owner could not be located, written notice of the hearing on the proposed resolution of necessity was mailed to the address listed on the last equalized county assessment roll, posted on the property, published on the press release page of the County's website, and printed in the *Mountain Democrat* newspaper; the County did not receive a response to the notice; after the notice required by Code of Civil Procedure, § 1245.235, at a meeting of the County Board of Supervisors on November 17, 2020, under Code of Civil Procedure, § 1245.210, et seq., the Board duly considered and adopted

Resolution Number 177-2020 stating and determining that the public interest and necessity require the acquisition of the subject property for a public use in construction and operation of Phase 1B of the Diamond Springs Parkway project and directed the filing of an eminent domain proceeding; through the eminent domain action the County seeks to condemn a fee simple interest in portions of the real property identified as Assessor's Parcel Number 327-270-003-000; and on February 17, 2022 the County deposited $1,000 with the State Treasury Compensation Fund as probable just compensation for the subject property.

In appears appropriate to enter a default judgment in plaintiff's favor.

TENTATIVE RULING # 7: PLAINTIFF'S REQUEST TO ENTER A DEFAULT JUDGMENT IS GRANTED. JUDGMENT SHALL ENTER IN FAVOR OF PLAINTIFF COUNTY OF EL DORADO AND AGAINST DEFENDANT EL DORADO COUNTY INDUSTRIAL DEVELOPMENT CORP., INC., A DISSOLVED CALIFORNIA CORPORATION IN THIS ACTION FOR EMINENT DOMAIN CONCERNING THE SUBJECT PARCEL OF PROPERTY. 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 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 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. 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, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. CONCEPCION v. MIN 22UD0043

Defendants' Motion to Strike Complaint, or, in the Alternative, to Dismiss the Case.

TENTATIVE RULING # 8: THE CASE HAVING BEEN VOLUNTARILY DISMISSED WITHOUT PREJUDICE UPON REQUEST OF THE PLAINTIFFS ON APRIL 4, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

9. BEAVER v. VRG PROPERTY MANAGEMENT PC-20210482

(1) Defendant's Motion to Compel Answers to Form and Special Interrogatories without Objections.

(2) Defendant's Motion to Compel Responses and Production of Documents without Objections.

(3) Defendant's Motion to Deem Admitted Requests for Admission.

These motions were originally set for hearing on April 8, 2022. On February 4, 2022, the court granted defendant's motion to advance the hearing date and advanced the hearing on these motions to March 11, 2022. The motions were heard on ruled on March 11, 2002. The amended orders on the motion were entered on March 25, 2022.

TENTATIVE RULING # 9: THIS HEARING DATE IS VACATED AS THE MOTIONS WERE PREVIOUSLY HEARD AND RULED ON.

10. FOULDS v. COLD SPRINGS MOBILE HOME PARK PC-20210033

Plaintiff's Motion to Compel Further Responses to Requests for Production.

TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 29, 2022, IN DEPARTMENT NINE.

11. DEBT MANAGEMENT PARTNERS, LLC v. SPECK PCL-20210411

Plaintiff's Motion for Judgment on the Pleadings.

On May 8, 2021, plaintiff filed an action for breach of contract and common counts related to a loan account. Plaintiff alleges that defendant owes a principal balance in the amount of $3,092.16; the last payment was on December 31, 2018; defendant defaulted by failure to pay the minimum monthly payments that were due; and despite plaintiff's demand for payment by defendant, there remains due and owing the principal amount of $3,092.16. Defendant answered the complaint by general denial.

A court trial is set to commence on May 2, 2022.

On February 4, 2022, the court granted plaintiff's motion to deem admitted requests for admission propounded upon defendant.

Plaintiff moves for entry of judgment on the pleadings on the grounds that the complaint states a cause of action against defendant to collect the alleged debt and that defendant's answer by general denial has been controverted by deemed admissions leaving defendant with no defense to the action.

Plaintiff requested the court to take judicial notice of several documents in the court's file, including a copy of the requests for admission submitted as Exhibit A to the motion to deem them admitted and the order deeming admitted the requests for admission.

The proofs of service in the court's file declares that on February 28, 2022, defendant was served the moving papers, the request for judicial notice, and notice of this hearing by mail to defendant's address of record. There was no opposition to the motion in the court's file at the time this ruling was prepared.

Meet and Confer Prior to Motion for Judgment on the Pleadings

"(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. ¶ (1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment. ¶ (2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following: ¶ (A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment

on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings. ¶ (B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith. ¶ (4) A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Emphasis added) (Code of Civil Procedure, § 439(a).)

The lack of proof that there was any meet and confer activities leads the court to the conclusion that there was an insufficient meet and confer process. However, the insufficient meet and confer process is not a valid ground to deny the motion.

Motion for Judgment on the Pleadings Principles

"(c)(1) The motion provided for in this section may only be made on one of the following grounds: ¶ (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint…." (Code of Civil Procedure, § 438(c)(1)(A).)

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Emphasis added.) (Code of Civil Procedure, § 438(d).)

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73

Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.)

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)" (Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331.) However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. (See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.)

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

"It is true that a court may take judicial notice of a party's admissions or concessions, but only in cases where the admission "can not reasonably be controverted," such as in answers to interrogatories or requests for admission, or in affidavits and declarations filed on the party's behalf. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989–990, 94 Cal.Rptr.2d 643; see also *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604–605,

176 Cal.Rptr. 824 ["The court will take judicial notice of records such as admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court."].)" (Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal.App.4th 471, 485.)

The following facts were deemed admitted by defendant and, therefore, cannot reasonably be controverted: defendant had loan with plaintiff; defendant became delinquent in the payments due on the loan; defendant left a balance due and owing on the loan; defendant received statements regarding the loan; defendant made a loan payment on December 31, 2018; and on May 31, 2019, there was a balance owing on the account in the amount of $3,092.16.

Defendant's deemed admissions also establish that the following documents attached to the requests for admission are genuine: the promissory note and disclosure statement; and the loan transaction history.

The court takes judicial notice of these deemed admissions as requested by plaintiff.

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225, 162 Cal.Rptr. 669), but the burden of demonstrating such an abuse of discretion is on the appellant. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.)" (Atlas Assurance Co. v. McCombs Corp. (1983) 146 Cal.App.3d 135, 149.)

Defendant was deemed to have admitted he owes plaintiff $3,092.16. Defendant has not opposed the motion, has not advised the court how the answer could be amended to state a viable defense considering the deemed admissions, and it appears to the court that the deficiency cannot be remedied by amendment. Under the circumstances presented, it appears

appropriate to grant the motion without leave to amend and enter judgment in favor of plaintiff for the amount prayed.

TENTATIVE RULING # 11: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. JUDGMENT IS ENTERED AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $3,092.16. 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 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 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. 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, APRIL

8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. WOODRING v. COVEY 21CV0317

Demurrer to Complaint.

Defendant personal representative of the Estate of Flora Sanchez (Case Number PP-20200103) demurs to the complaint on the ground that the alleged loan debt is barred by the two year statute of limitation for an oral contract as the debt was allegedly incurred more than 22 years prior to the filing of the complaint; title to the real property allegedly purchased with the loan was transferred by plaintiff to decedent and her husband over 18 years prior to the filing of the complaint; and the subject real property was sold to an unrelated third party seven years prior to the complaint being filed.

Plaintiff opposes the demurrer on the following grounds: the meet and confer activities were insufficient as plaintiff was only contacted once by defense counsel requesting an extension to respond; while she proposed to extend the time to respond, the statement by defense counsel that they had reached an agreement to resolve the objections and underlying dispute is not entirely true; plaintiff does not feel that her oral agreement with her parents was breached as they agreed that plaintiff would not be repaid until the condo was sold, her parents needed to sell the condo to find a more appropriate place to live, while moving out, the condo flooded on December 10, 2013 that caused it to be red flagged as uninhabitable until it was repaired months afterwards in order to sell it, and the parties entered into a new oral agreement to search for and purchase a single family residence for her parents; and having realized her parents could no longer live alone, plaintiff purchased a home with her own funds and had her parents move in with her as their primary caregiver, therefore, the action was tolled.

Meet and Confer Requirement

"(a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer

for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading. ¶ (1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. ¶ (2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The demurring party shall file and serve with the demurrer a declaration stating either of the following: ¶ (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer. ¶ (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith. ¶ (4) Any determination by the court that the meet and confer process was insufficient shall not be

grounds to overrule or sustain a demurrer." (Emphasis added.) (Code of Civil Procedure, § 430.41(a).)

Defense counsel declares: the parties met and conferred in writing and in person regarding defendant's objections to the breach of contract claim and legal support for the alleged deficiencies; and an agreement was reached that would have resolved the objections and the underlying dispute, however, plaintiff refused to honor that agreement requiring the filing of the demurrer.

Plaintiff disputes the characterization of the meet and confer activities in an unverified "Answer" (Opposition) to the demurrer.

Even assuming for the sake of argument only that the meet and confer activities were inadequate, that would not be grounds to overrule or sustain a demurrer.

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.)

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

Breach of Contract – Statute of Limitations

"'A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred.' (*Moseley v. Abrams* (1985) 170 Cal.App.3d 355, 359, 216

Cal.Rptr. 40; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 775, 167 Cal.Rptr. 440.) It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. (*Valvo v. University of Southern California* (1977) 67 Cal.App.3d 887, 895, 136 Cal.Rptr. 865; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155, 281 Cal.Rptr. 827.) This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative defense. (*Farris v. Merritt* (1883) 63 Cal. 118, 119.)" (Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 881.) Where the dates alleged in the complaint state that certain conduct occurred "on or about" that date, then for the purposes of demurrer the date stated is not certain enough to establish that the allegations of the complaint show the action is necessarily barred when a date in very near proximity to the date specified will satisfy the applicable statute of limitations. (Childs v. State of California (1983) 144 Cal.App.3d 155, 159-162.) The appellate court in Childs, supra, held at page 161 that since the complaint would be timely filed under the applicable statute of limitation where the conduct that began the running of the statute occurred even one day after the "on or about" date alleged, the pleading of "on or about" that date was sufficient to withstand a general demurrer, as it reveals only that plaintiff's action *may* be barred by operation of the statute of limitation. (Emphasis in original.) The appellate court further held: "Our survey of the cases addressing the issue persuades us that use of the term "on or about" when pleading dates constitutes a proper pleading only where the date specifically alleged is well within the applicable time constraint and where the actual date on which the subject event occurred is within close proximity to the alleged date. (*Cohn v. Wright,* 89 Cal. 86, 26 P. 643; *People v. Aday,* 226 Cal.App.2d 520, 38 Cal.Rptr. 199; *Boscus v. Waldmann,* supra, 31 Cal.App. 245, 160 P. 180.)" (Childs v. State of California (1983) 144 Cal.App.3d 155, 160.)

"A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. (See *Saliter v. Pierce Brothers Mortuaries* (1978) 81 Cal.App.3d 292, 300, 146 Cal.Rptr. 271.) The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint might be barred. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403, 44 Cal.Rptr.2d 339.) If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment....' (*United Western Medical Centers v. Superior Court* (1996) 42 Cal.App.4th 500, 505, 49 Cal.Rptr.2d 682.)" (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 324-325.)

The verified Judicial Council Form complaint alleges: plaintiff's deceased parents, Emilio and Flora Sanchez entered into an oral agreement on August 13, 1999 wherein plaintiff loaned the defendant decedents over $25,000 to purchase a condo in which they would live; checks were written by plaintiff payable to the Title Company for the down payment and closing costs which are included as attachment 2-9; on or about May 18, 2020 decedent passed away without paying the balance due; the property was purchased in plaintiff's name, because her parents could not obtain a loan due to a prior bankruptcy; the property became their primary residence on September 13, 1999; on April 9, 2003 plaintiff grant deeded the property to her parents so they could have tax write offs; and plaintiff was never repaid the loan as they lived month to month and never had the money to pay her back.

"Under a breach of contract theory, the plaintiff must demonstrate a contract, the plaintiff's performance or excuse for nonperformance, the defendant's breach, and damage to the plaintiff.

(4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 476, p. 570.)" (Amelco Electric v. City of Thousand Oaks (2002) 27 Cal.4th 228, 243.)

"Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code; or an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder." (Code of Civil Procedure, § 339(1).)

"…a cause of action for breach of contract ordinarily accrues at the time of breach even though the injured party is unaware of his right to sue (Witkin, Cal. Procedure (1954) p. 624)." (Donahue v. United Artists Corp. (1969) 2 Cal.App.3d 794, 802.)

"A cause of action for breach of contract does not accrue before the time of breach. (*Spear v. California State Automobile Association, supra,* 2 Cal.4th at p. 1042, 9 Cal.Rptr.2d 381, 831 P.2d 821; *Trustees of Capital Wholesale Electric etc. Fund v. Shearson Lehman Bros., Inc.* (1990) 221 Cal.App.3d 617, 627, fn. 4, 270 Cal.Rptr. 566; *Niles v. Louis H. Rapoport & Sons* (1942) 53 Cal.App.2d 644, 651, 128 P.2d 50; see also 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 375, p. 402.) We have established that: "There can be no *actual* breach of a contract until the time specified therein for performance has arrived." (*Taylor v. Johnston* 1975) 15 Cal.3d 130, 137, 123 Cal.Rptr. 641, 539 P.2d 425, italics in original.) Nonetheless, if a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred. (*Ibid.*; *Gold Min. & Water Co. v. Swinerton* (1943) 23 Cal.2d 19, 29, 142 P.2d 22; see *Story v. San Rafael Military Academy*

(1960) 179 Cal.App.2d 416, 417, 3 Cal.Rptr. 847 [applying the doctrine in the context of an employment contract]; see also Civ.Code, § 1440 [in the case of an anticipatory repudiation, the plaintiff may enforce the obligation without previously performing].) The rationale for this rule is that the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise. (4 Corbin, Contracts (1951 ed.) § 959, p. 852.)" (Romano v. Rockwell Internat., Inc. (1996) 14 Cal.4th 479, 488-489.)

"Suit was not commenced until December 1963. It is undisputed that the money was advanced between 1951 and 1958, and that the asserted loans were not evidenced by anything in writing. The applicable statute of limitations is two years. (Code Civ.Proc. s 339). ¶ From plaintiff's testimony, it could reasonably be concluded that the loans were payable on demand, or within a reasonable time if no demand was made. For purposes of the statute of limitations, loans payable on demand are deemed payable at their inception, and the statute begins to run from such time. (*Carrasco v. Greco Canning Co.*, 58 Cal.App.2d 673, 137 P.2d 463, and see annotations in 71 A.L.R.2d 284 and 159 A.L.R. 1021.) The evidence clearly supports the conclusion that, prior to this suit, more than two years had elapsed since the last of the loans became payable." (Emphasis added.) (Buffington v. Ohmert (1967) 253 Cal.App.2d 254, 256.)

"Plaintiff argues that Defendant's breach of contract claim is barred by the applicable statute of limitations because "[t]he statute of limitations on Demand Notes begins to run when Demand Notes are signed, not upon their demand." (Dkt. No. 118 at 12.) Plaintiff cites no authority for this argument; however, he is correct that the statute of limitations begins to run upon execution of a demand note. There is a four-year statute of limitations under California law for breach of contract claims, *see* Cal. Civ. Proc. Code § 337, and "loans payable on demand are deemed payable at their inception, and the statute begins to run from such time," *Buffington v. Ohmert*,

253 Cal. App. 2d 254, 256, 61 Cal.Rptr. 360 (Cal. Ct. App. 1967)." (Emphasis added.) (t'Bear v. Forman (N.D. Cal. 2019) 359 F.Supp.3d 882, 905.)

The complaint as pled does not allege any facts to establish there was any time or event designated to repay the alleged oral loan agreement. Therefore, as pled, the loan was payable on the date of inception of the loan, which was August 13, 1999. The statute of limitations for breach of an oral agreement is two years. Therefore, under the allegations of the complaint, the breach occurred at the inception of the loan on August 13, 1999, and the two-year statute of limitations for the oral loan agreement expired on August 13, 2001. It appears clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred by the applicable statute of limitations. The demurrer to the complaint is sustained. The question becomes whether leave to amend should be granted.

"It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.) Regardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. (*McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304, 225 Cal.Rptr. 394.) The burden is on the plaintiff to demonstrate how he or she can amend the complaint. It is not up to the judge to figure that out. (*Blank v. Kirwan*, supra, 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) Plaintiff can make this showing in the first instance to the appellate court. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386, 272 Cal.Rptr. 387.)" (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 322.)

Plaintiff asserts the following facts in the opposition: the agreement with her deceased parents was that plaintiff would not be repaid until the condo was sold, her parents needed to

sell the condo to find a more appropriate place to live, while moving out, the condo flooded on December 10, 2013 that caused it to be red flagged as uninhabitable until it was repaired months afterwards in order to sell it, and the parties entered into a new oral agreement to search for and purchase a single family residence for her parents for them; and having realized her parents could no longer live alone, plaintiff purchased a home with her own funds and had her parents move in with her as their primary caregiver.

Plaintiff has essentially asserted that the parties first agreed that the time to perform by repayment of the loan was set as the date the condo was sold; and that the parties later modified the oral agreement to repay the alleged oral loan by an oral agreement to apply the funds from the condo sale to search for and purchase a single-family residence for her parents to live in. The date of renewal of the agreement is not stated and the date when plaintiff decided to purchase the residence with her own funds instead is not disclosed. Therefore, the alleged facts and circumstances concerning the alleged oral loan agreement and modification of the agreement before the court does not establish that the action is necessarily barred should the additional facts be pled in an amended complaint. In other words, there is a reasonable possibility that the pleading can be cured by amendment; and the complaint does not show on its face that it is incapable of amendment.

The demurrer to the complaint is sustained with ten days leave to amend.

TENTATIVE RULING # 12: DEFENDANT'S DEMURRER TO THE COMPLAINT IS SUSTAINED WITH TEN DAYS LEAVE TO AMEND. 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 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 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. 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, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

13. SHTULVARG CORP. v. HWANG 21CV0220

Defendants Hwang's and Lee's Demurrer to 1st Amended Complaint.

On January 28, 2022, plaintiff filed a 1st amended complaint asserting causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, unfair competition and breach of the Uniform Trade Secrets Act.

Defendants Hwang and Lee assert: the entire 1st amended complaint is uncertain as it cannot be determined which causes of action are directed at which defendants and it is uncertain as to how the defendants' complained of conduct caused plaintiff damages where sushi restaurant customers choose to patronize restaurants other than plaintiff's restaurant; the facts alleged do not sufficiently allege that defendants Hwang and Lee breached any contract they had with plaintiff; the breach of implied covenant cause of action is duplicative of the breach of contract cause of action and is defective for the same reasons; the conduct complained of is not unfair competition as a matter of law; and the 1st amended complaint fails to state a cause of action for violation of the Trade Secrets Act as plaintiff has failed to allege, and cannot truthfully allege, that that the recipes were not among the assets transferred.

The proof of service declares that on March 1, 2022, notice of the hearing and the demurrer papers were served by mail and email to plaintiff's counsel. There was no opposition in the court's file at the time this ruling was prepared.

No papers opposing the demurrers having been filed with the court at least nine court days before the hearing (Code of Civil Procedure, § 1005(b).), the court exercises its discretion to treat the plaintiffs' failure to file an opposition as an admission that the demurrers are meritorious and sustains the demurrers with ten days leave to amend. (See Local Rule 7.10.02C.)

TENTATIVE RULING # 13: DEFENDANTS HWANG'S AND LEE'S DEMURRERS TO ALL CAUSES OF ACTION OF THE 1ST AMENDED COMPLAINT ARE SUSTAINED WITH TEN

DAYS LEAVE TO AMEND. 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 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 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. 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, APRIL 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.