1. MATTER OF ASAY 22CV0464

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 # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 3, 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.

2. HARRINGTON v. EL DORADO COUNTY PC-20160402

Defendant El Dorado County's Motion for an Award of Attorney Fees Incurred on Plaintiff's Appeal.

A bifurcated trial on the sole issue of whether plaintiff presented a tort claim to defendant El Dorado County took place on June 4, 2019, and after deliberating 40 minutes, the jury returned a verdict finding that plaintiff did not provide a tort claim to defendant El Dorado County. The court entered a directed verdict on all causes of action requiring a tort claim. On July 22, 2019, defendant El Dorado County filed a motion for an award of attorney fees pursuant to Code of Civil Procedure, § 1038. Plaintiff opposed the motion and defendant replied to the opposition. On July 28, 2020, the court issued its ruling on the submitted motion and awarded defendant County $121,837.50 in attorney fees and $11,637.85 in costs pursuant to a memorandum of costs submitted by defendant.

On August 27, 2020, plaintiff filed a notice of appeal from that July 28, 2020, order awarding attorney fees and costs.

On November 18, 2021, the Third District Court of Appeal entered its opinion affirming the order awarding attorney fees and costs to the defendant County and expressly providing "The County shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)"

The remittitur was issued on March 2, 2022, and received by the Court on March 4, 2022

On March 18, 2022, defendant County filed a motion for determination and award of attorney fees on appeal in the amount of $59,197.50 pursuant to the provisions of Code of Civil Procedure, § 1033.5(a)(10), (b) and (c) and Rules of Court, Rules 8.278(a)(1), (a)(2) and (d)(2).

The proofs of service filed on March 18, 2022, and March 24, 2022, declare that on March 22, 2022, the notice of hearing moving papers were served by mail on counsel for plaintiff Hamilton Law Office and on March 17, 2022, the notice of hearing and moving papers were served by mail on counsels for plaintiff Hamilton Law Office and Benjamin Ramos.

The motion was initially set for hearing on May 13, 2022, and was continued to June 3, 2022. The proof of service filed on May 13, 2022, declares that notice of the continued hearing was served by mail to counsels for plaintiff Hamilton Law Office and Benjamin Ramos on May 13, 2022.

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

"In any civil proceeding under the California Tort Claims Act or for express or implied indemnity or for contribution in any civil action, the court, upon motion of the defendant or cross-defendant, shall, at the time of the granting of any summary judgment, motion for directed verdict, motion for judgment under Section 631.8, or any nonsuit dismissing the moving party other than the plaintiff, petitioner, cross-complainant, or intervenor, or at a later time set forth by rule of the Judicial Council adopted under Section 1034 determine whether or not the plaintiff, petitioner, cross-complainant, or intervenor brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party.

An award of defense costs under this section shall not be made except on notice contained in a party's papers and an opportunity to be heard." (Code of Civil Procedure, § 1038(a).)

""Defense costs," as used in this section, shall include reasonable attorneys' fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding." (Code of Civil Procedure, § 1038(b).)

"The following items are allowable as costs under Section 1032: ¶ * * * (10) Attorney fees, when authorized by any of the following: (A) Contract. ¶ (B) Statute. ¶ (C) Law." (Code of Civil Procedure, § 1033.5(a)(10).)

"(a) Award of costs ¶ (1) Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal. ¶ (2) The prevailing party is the respondent if the Court of Appeal affirms the judgment without modification or dismisses the appeal. The prevailing party is the appellant if the court reverses the judgment in its entirety." (Rules of Court, Rule 8.278(a)(1) and (a)(2).)

"(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702." (Rules of Court, Rule 8.278(d)(2).)

"(1) Within 40 days after issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700. ¶ (2) A party may serve and file a motion in the superior court to strike or tax costs claimed under (1) in the manner required by rule 3.1700. ¶ (3) An award of costs is enforceable as a money judgment." (Rules of Court, Rule 8.278(c).)

"…it is now beyond question that when attorney fees are available pursuant to statute or the parties' agreement, they are available for services both at trial and on appeal. (*Morcos v. Board*

of Retirement (1990) 51 Cal.3d 924, 927, 275 Cal.Rptr. 187, 800 P.2d 543; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 637, 186 Cal.Rptr. 754, 652 P.2d 985; *Security Pacific National Bank v. Adamo* (1983) 142 Cal.App.3d 492, 498, 191 Cal.Rptr. 134; *Leaf v. Phil Rauch, Inc.* (1975) 47 Cal.App.3d 371, 379, 120 Cal.Rptr. 749.)" (Harbour Landing-Dolfann, Ltd. v. Anderson (1996) 48 Cal.App.4th 260, 263.)

Absent opposition, having read and considered the moving papers and declarations filed in support, the court finds it appropriate to grant the motion and award defendant El Dorado County the amount of $59,197.50 in attorney fees reasonably incurred to successfully defend against defendant's appeal.

TENTATIVE RULING # 2: DEFENDANT EL DORADO COUNTY'S MOTION FOR AN AWARD OF ATTORNEY FEES INCURRED ON PLAINTIFF'S APPEAL IS GRANTED. THE COURT AWARDS DEFENDANT COUNTY OF EL DORADO $59,197.50 PAYABLE BY PLAINTIFF/APPELLANT HARRINGTON. 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, JUNE 3, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

3. MIDLAND CREDIT MANAGEMENT v. HIRSCH PCL-20210071

Motion to Compel Arbitration and Stay Proceedings.

On January 28, 2021, plaintiff filed an action against defendant for an alleged debt owed on a credit card account. Plaintiff and defendant appeared at the case management conference on June 7, 2021, and the court set the initial court trial date as November 7, 2022, which was estimated to be a one-day trial. On October 6, 2021, the court, on its own motion, vacated the trial date, set a new trial date for March 30, 2022, and set an issues conference date for March 18, 2022. During the mandatory settlement conference on January 26, 2022, the court set a trial setting conference for February 28, 2022. At the February 28, 2022, trial setting conference defendant advised the court that she had submitted a motion to compel arbitration. Plaintiff's counsel stated he was unaware of any motion having been served on his office. The court continued the trial setting conference to March 28, 2022.

The defendant's motion to compel arbitration was filed on February 25, 2022.

Defendant moves to compel arbitration on the ground that the credit card agreement provides that if either plaintiff or defendant make a demand for arbitration. The parties must arbitrate any dispute of claim between that directly or indirectly arises from or relates to the subject account, the account agreement, or the parties' relationship.

Except for specifically enumerated exceptions, the court must order the petitioner and respondent to arbitrate a controversy, if the court finds that a written agreement to arbitrate the controversy exists. (Code of Civil Procedure, § 1281.2(a).)

"California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Christensen v. Dewor Developments* (1983) 33 Cal.3d 778, 782, 191 Cal.Rptr. 8, 661 P.2d 1088 [(the court should " '

" 'indulge every intendment to give effect to' " ' " an arbitration agreement]; *Valsan Partners Limited Partnership v. Calcor Space Facility, Inc.*, supra, 25 Cal.App.4th at pp. 816-817, 30 Cal.Rptr.2d 785; *Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.*, supra, 164 Cal.App.3d at p. 1127, 211 Cal.Rptr. 62.) As the Supreme Court recently noted, "... the decision to arbitrate grievances evinces the parties' intent to bypass the judicial system and thus avoid potential delays at the trial and appellate levels...." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10, 10 Cal.Rptr.2d 183, 832 P.2d 899.) This strong policy has resulted in the general rule that arbitration should be upheld "unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. (Citation.))" (*Bos Material Handling, Inc. v. Crown Controls Corp.* (1982) 137 Cal.App.3d 99, 105, 186 Cal.Rptr. 740 [a terminated dealer's tort causes of action against a manufacturer, including claims for breach of the covenant of good faith and fair dealing, were all required to be arbitrated under their dealership agreement].) ¶ It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause cannot be interpreted to require arbitration of the dispute. Thus, if there is any reasonable doubt as to whether Coast Plaza's claims come within the Service Agreement's arbitration clause, that doubt must be resolved in favor of arbitration, not against it. (*Hayes Children Leasing Co. v. NCR Corp.* (1995) 37 Cal.App.4th 775, 788, 43 Cal.Rptr.2d 650; *Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1189, 33 Cal.Rptr.2d 188; *United Transportation Union v. Southern Cal. Rapid Transit Dist.* (1992) 7 Cal.App.4th 804, 808, 9 Cal.Rptr.2d 702.)" (Coast Plaza Doctors Hosp. v. Blue Cross of California (2000) 83 Cal.App.4th 677, 686-687.)

"In California, "[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate." (*Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 420, 100 Cal.Rptr.2d 818; see *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972–973, 64 Cal.Rptr.2d 843, 938 P.2d 903.) Generally, an arbitration agreement must be memorialized in writing. (*Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal.App.4th 1351, 1363, 95 Cal.Rptr.3d 252.) A party's acceptance of an agreement to arbitrate may be express, as where a party signs the agreement. A signed agreement is not necessary, however, and a party's acceptance may be implied in fact (e.g., *Craig,* at p. 420, 100 Cal.Rptr.2d 818 [employee's continued employment constitutes acceptance of an arbitration agreement proposed by the employer]) or be effectuated by delegated consent (e.g., *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 852–854, 114 Cal.Rptr.3d 263, 237 P.3d 584 (*Ruiz*).) An arbitration clause within a contract may be binding on a party even if the party never actually read the clause. (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1215, 78 Cal.Rptr.2d 533.)" (Emphasis added.) (Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 236.)

""As this court has noted in the past, arbitration agreements should be liberally interpreted and arbitration should be ordered unless an agreement clearly does not apply to the dispute in question. (*Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1189, 33 Cal.Rptr.2d 188.)" (Oakland-Alameda County Coliseum Authority v. CC Partners (2002) 101 Cal.App.4th 635, 644.)

"A written agreement to arbitrate is fundamental, because Code of Civil Procedure section 1281.2 permits a court to order the parties to arbitrate a matter only if it determines that an agreement to arbitrate exists. (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 356, 72 Cal.Rptr.2d 598; *Berman v. Renart Sportswear Corp.* (1963) 222

Cal.App.2d 385, 388-389, 35 Cal.Rptr. 218.) Indeed, when the trial court reviews a petition to compel arbitration, the threshold question is whether there is an agreement to arbitrate. (*Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 683, 57 Cal.Rptr.2d 867.)" (Villa Milano Homeowners Ass'n v. Il Davorge (2001) 84 Cal.App.4th 819, 824-825.)

"However, notwithstanding the cogency of the policy favoring arbitration and despite frequent judicial utterances that because of that policy every intendment must be indulged in favor of finding an agreement to arbitrate, the policy favoring arbitration cannot displace the necessity for a voluntary agreement to arbitrate. (See *Player v. Geo. M. Brewster & Son, Inc.*, supra, 18 Cal.App.3d 526, 534, 96 Cal.Rptr. 149.) As our Supreme Court recently observed: 'There is indeed a strong policy in favor of enforcing agreements to arbitrate, but there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate . . ..' (*Freeman v. State Farm Mut. Auto. Ins. Co.*, supra, 14 Cal.3d 473, 481, 121 Cal.Rptr. 477, 482, 535 P.2d 341, 346.) And it has been held that to be enforceable, an agreement to arbitrate must have been 'openly and fairly entered into.' (*Player v. Geo. M. Brewster & Son, Inc.*, supra, 18 Cal.App.3d 526, 534, 96 Cal.Rptr. 149; *Windsor Mills, Inc. v. Collins & Aikman Co.*, supra, 25 Cal.App.3d 987, 993--994, 101 Cal.Rptr. 347.)" (Wheeler v. St. Joseph Hospital (1976) 63 Cal.App.3d 345, 356.)

"It follows, of course, that if there was no valid contract to arbitrate, the petition must be denied. (Ibid. ["There is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate. [Citation.]"]; *Boys Club of San Fernando Valley, Inc. v. Fidelity & Deposit Co.* (1992) 6 Cal.App.4th 1266, 1271, 8 Cal.Rptr.2d 587.)" (Banner Entertainment, Inc. v. Superior Court (Alchemy Filmworks, Inc.) (1998) 62 Cal.App.4th 348, 356.)

The complaint alleges that the subject credit account was established by Synchrony Bank and all rights, title and interest on the account was assigned to plaintiff. (Complaint, paragraph 5.)

Attached to the moving papers is an unauthenticated copy of the purported PayPal Cashback MasterCard agreement with Synchrony Bank. The purported agreement contained an arbitration provision on pages 5 and 6 consisting of 14 paragraphs.

Paragraph 1 provides: "If either you or we make a demand for arbitration, you and we must arbitrate any dispute of claim between you (including any other user of your account), and us (including our parents, affiliates, agents, employees, officers, and assignees) that directly or indirectly arises from or relates to your account, your account Agreement or our relationship, except as noted below. In addition, PayPal, Inc. and/or any assignee, agent, or service provider of ours that collects amounts due on your account are intended beneficiaries of this Arbitration section and may enforce it in full (notwithstanding any state law to the contrary).(Emphasis added.)

Paragraph 2 provides: "The Arbitration section broadly covers claims based upon contract…"

Paragraph 7 provides: "The party who wants to arbitrate must notify the other party in writing. This notice can be given after the beginning of a lawsuit or in papers filed in the lawsuit…"

Unfortunately, the unauthenticated purported agreement is not admissible due the lack of proper authentication as the subject agreement.

"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…" (Code of Civil Procedure, § 1005(b).)

The proof of service declares that notice of the hearing and the moving papers were caused to be sent to plaintiff's counsel by mail on February 25, 2022.

The proof of service is not executed under penalty of perjury and defendant executed the statement of service, which renders the proof of service invalid. (See Code of Civil Procedure, § 1013a.)

Only defendant appeared at the hearing on March 25, 2022. Defendant stated that the motion was mailed to plaintiff in San Diego. The court continued the hearing to June 3, 2022, and directed defendant to serve plaintiff with the motion reflecting the new hearing date and to file the original proof of service prior to the hearing date.

The March 30, 2022, trial date was vacated on March 28, 2022, and a trial setting conference calendared for June 13, 2022, at 11:00 a.m. in Department Nine.

There is no proof of service of the motion and notice of the new hearing date. The plaintiff did not file an opposition in the court's file as of the date this tentative ruling was prepared.

Absent valid proof of adequate service of notice and the moving papers, the court has no alternative other than to deny the motion without prejudice due to lack of proof of service.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 3, 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. TUNDAVIA v. DASGUPTA PC-20200482

Defendant Dasgupta's Motion to Quash Subpoena Duces Tecum Seeking Defendant's Work Schedule Records

Defendant moves to quash the subpoena seeking his work schedule records at Folsom Anesthesia Medical Group, Inc. The moving papers and declaration in support of the motion are not executed.

The proof of personal service filed on May 19, 2022, declares that notice of the hearing, notice of the tentative ruling information, and the moving papers were personally served on plaintiff's counsel on May 16, 2022. The notice of motion and moving papers were filed with the court on May 16, 2022. There was no opposition in the court's file at the time this ruling as prepared.

"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. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply

papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing. ¶ The court, or a judge thereof, may prescribe a shorter time." (Code of Civil Procedure, § 1005(b).)

The Third District Court of Appeal has held: "Successful service by mail requires strict compliance with all statutory requirements, including those set forth in section 1013; the failure to comply deprives a court of jurisdiction to act. (*Sharp v. Union Pacific R.R. Co.* (1992) 8 Cal.App.4th 357, 360, 9 Cal.Rptr.2d 925; *Dobrick v. Hathaway* (1984) 160 Cal.App.3d 913, 921, 207 Cal.Rptr. 50; *Triumph Precision Products, Inc. v. Insurance Co. of North America, supra,* 91 Cal.App.3d at p. 365, 154 Cal.Rptr. 120; *Valley Vista Land Co. v. Nipomo Water & Sewer Co.* (1967) 255 Cal.App.2d 172, 174, 63 Cal.Rptr. 78.)" (Lee v. Placer Title Co. (1994) 28 Cal.App.4th 503, 509.)

On the other hand, "The irregularity is not reversible. "The principal purpose of the requirement to file and serve a notice of motion a specified number of days before the hearing ([Code Civ. Proc.,] § 1005, subd. (b)) is to provide the opposing party adequate time to prepare an opposition. That purpose is served if the party appears at the hearing, opposes the motion on the merits, and was not prejudiced in preparing an opposition by the untimely notice." (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 343, 26 Cal.Rptr.3d 854.)" (In re Marriage of Falcone (2008) 164 Cal.App.4th 814, 828-829.) The appellate court in Marriage of Falcone found that the moving party's service of the notice of the hearing and moving papers a day short of the time required by Code of Civil Procedure section 1005 did not prejudice the opposing party's ability to prepare the opposition and, in fact, the opposition addressed the adequacy of the notice but also raising issues concerning whether counsel's declaration had been signed under penalty of perjury, clarifying the substance of her new trial

motion and arguing its merits, defending the objections counsel had cited as frivolous, attacking counsel's credibility, and attacking the merits of the sanctions motion itself.

The court and plaintiff's counsel only received the notice of hearing and moving papers 13 court days before the hearing date noticed. The notice period is designed to provide the opposing party adequate time to prepare an opposition; and that purpose is served if the party appears at the hearing, opposes the motion on the merits, and was not prejudiced in preparing an opposition by the untimely notice. There is no opposition in the court's file and due to the Memorial Day holiday, plaintiff was required to file and serve the opposition not later than Friday, May 20, 2022, which is only four days after personal service of the notice and motion.

The court continues the hearing to the motion due to failure to comply with the required notice period. The court continues to July 1, 2022, at 8:30 a.m. in Department 9.

TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 1, 2022, IN DEPARTMENT NINE.

5. WORTH v. SQUIRES 21UD0052

Defendants' Motion to Set Aside/Vacate Default.

On January 3, 2022, defendants filed an answer to the complaint for unlawful detainer. On February 15, 2022, the court clerk served by mail to plaintiff's and defendants' addresses of record notice that the trial was set to commence on March 14, 2022, at 9:30 a.m. in Department Nine. Defendants failed to appear at trial, plaintiff made an offer of proof, counsel questioned the party, and judgment entered against defendants.

Defendants move to vacate the judgment on the grounds of inadvertence, surprise, and excusable neglect due to improper service of the notification of trial in that plaintiff purportedly removed from defendant's mailbox the notification of trial.

The proof of service filed on May 3, 2022, declares that notice of the hearing and a copy of the moving papers were served on plaintiff on April 21, 2022. Plaintiff's counsel admits receiving the notice and moving papers on May 17, 2022.

Plaintiff opposes the motion on the following grounds: the motion was not timely served and must, therefore, be denied; and the motion must be denied as it lacks any admissible evidentiary support to the claim that plaintiff removed the trial notification from defendants' mailbox.

Code of Civil Procedure, § 473(b) allows for a party to obtain relief from a default and default judgment which was taken against the party through his or her mistake, inadvertence, surprise, or excusable neglect. (Code of Civil Procedure, § 473(b).)

"It is settled that the law favors a trial on the merits (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513, 164 P.2d 936; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 525, 190 P.2d 593; *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904, 170 Cal.Rptr. 328; *Elston v. City of*

Turlock (1985) 38 Cal.3d 227, 233, 211 Cal.Rptr. 416, 695 P.2d 713; *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 243 Cal.Rptr. 902, 749 P.2d 339) and therefore liberally construes section 473. (*Elms v. Elms*, supra, 72 Cal.App.2d at p. 513, 164 P.2d 936.) Doubts in applying section 473 are resolved in favor of the party seeking relief from default (*Elston v. City of Turlock*, supra, 38 Cal.3d at p. 233, 211 Cal.Rptr. 416, 695 P.2d 713) and if that party has moved promptly for default relief only slight evidence will justify an order granting such relief." (Iott v. Franklin (1988) 206 Cal.App.3d 521, 526.)

Defendants declares a third party witnessed plaintiff taking the notification of trial from the plaintiff's mailbox; at the time it was witnessed by the third party, defendants did not know what was taken was the hearing notification, as plaintiff had rummaged through defendants' mailbox illegally a number of times before as had been witnessed by several third parties; knowing the courts were delayed, and new to the legal process, defendants did not question the fact they had not yet received notice of the hearing; and due to plaintiff's conduct, defendants had no way of knowing about the hearing and could not have attended.

There are no declarations from the third-party witnesses in the court's file, therefore, there is no admissible evidence that plaintiff tampered with the defendants' receipt of the clerk's notice of the date the trial was set.

"A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." (Evidence Code, § 641.)

"" '[I]f a party proves that a letter was mailed, the trier of fact is required to find that the letter was received in the absence of any believable contrary evidence. However, if the adverse party denies receipt, the presumption is gone from the case. *The trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received*.' " (*Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn.

12, 113 Cal.Rptr. 790, italics added.)" (Craig v. Brown & Root, Inc. (2000) 84 Cal.App.4th 416, 421-422.)

There is no admissible evidence before the court that there is any issue with defendants receiving mail at their address of record. Defendants only assert unsubstantiated claims that plaintiff illegally rummaged through their mailbox that was witnessed by unidentified third-party witnesses, who have not submitted a declaration under oath to that effect.

Considering and weighing the defendants' denial of receipt, the lack of any admissible evidence to support the claim that the notice of trial was taken from defendants' mail by plaintiff, and the inference of receipt arising from proof of mailing, the court finds the letter was received.

Defendants' motion to set aside/vacate default is denied.

TENTATIVE RULING # 5: DEFENDANTS' MOTION TO SET ASIDE/VACATE DEFAULT IS DENIED. 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, JUNE 3, 2022. EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. ADDY v. BAJWA PC-20210280

Defendant Marshall Medical Center's Motion for Summary Judgment.

TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 15, 2022, IN DEPARTMENT NINE.

7. DEBT MANAGEMENT PARTNERS v. MCCCOY PCL-20210423

Motion for Judgment on the Pleadings.

On June 2, 2022, plaintiff filed an action for breach of contract and common counts related to an unsecured loan. Plaintiff alleges: on July 19, 2018 defendant entered into a promissory note and disclosure statement with LoanMe, Inc. for the issuance of a loan; the promissory note and disclosure statement were executed via certified digital software pursuant to the electronic signatures in the Global and National Commerce Act; a sum of money was agreed to be loaned to defendant and defendant agreed to repay all sums loaned with interest, fees and charges; a true and correct copy of that promissory note and disclosure statement is attached to the complaint as Exhibit A; that defendant owes a principal balance in the amount of $2,903.08 and post-charge-off interest in the amount of $691.17; the last payment date was on January 1, 2019; and despite demand for payment, defendant has failed to pay plaintiff. Defendant answered the complaint by general denial and asserted affirmative defenses that defendant is innocent, defendant was a victim of identity theft, and defendant did not direct or authorize funds from LoanMe, Inc.

On March 11, 2022, the court granted plaintiff's motion to deem admitted requests for admission propounded upon defendant. The order deeming requests for admission, set one admitted was entered on March 25, 2022.

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 seeks entry of judgment against defendant in the

principal amount of $2,903.08, interest in the amount of $670.49, and court costs in the amount of $715.50.

Plaintiff requests that the court take judicial notice of the complaint, defendant's answer, plaintiff's requests for admission propounded upon defendant; and the court's order deeming those matters admitted.

The court takes judicial notice as requested.

Plaintiff did not file and serve on defendant a memorandum of costs.

The proofs of service in the court's file declares that on April 14, 2022, defendant was served the moving papers 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).)

Plaintiff's counsel has not submitted a meet and confer declaration. Inasmuch as defendant has not opposed the motion or objected to the failure to meet and confer prior to the hearing, the court finds that the issue was waived by failure to object and, in any event, does not constitute grounds 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 "cannot 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: the attached LoanMe, Inc. Promissory Note and Disclosure Statement is genuine; the attached loan transaction statement is genuine; defendant applied for a loan with LoanMe, Inc. bearing the subject account number; defendant received a loan from LoanMe, Inc. bearing the subject account number; defendant became delinquent in payments on the

loan; defendant left a balance due and owing on the loan; defendant received statements regarding the loan; the balance due and owing by defendant on the subject loan was $2,903.08 as of May 31, 2019; at all relevant times, plaintiff has all rights, title, interest and sole ownership of the loan; and on June 1, 2019 defendant made a payment on the loan.

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's deemed admissions establish that defendant owes plaintiff the principal balance of $2,903.08. 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 # 7: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. THE COURT ORDERS JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $2,903.08, INTEREST IN THE AMOUNT OF $670.49, AND COURT COSTS PURSUANT TO THE MEMORANDUM OF COSTS PROCEDURE. 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, JUNE 3, 2022. EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD, ET AL. PC-20200294

Defendants Wilson's Demurrer to All About Equine Animal Rescue's Complaint

This action involves access to multiple parcels of land via two easements. Plaintiff All About Equine Animal Rescue's ("AAE") complaint (filed June 22, 2020) asserts causes of action for trespass to real property (1st C/A), trespass to chattel (2nd C/A), nuisance (3rd C/A), quiet title to real property (4th and 5th C/A), and declaratory relief (6th C/A). By way of background, on May 19, 2021, defendant Doe 1 to the complaint was identified as Terry Wilson, and on June 4, 2021, defendant Doe 2 was identified as Dawn Wilson. AAE dismissed its 4th C/A for quiet title on August 26, 2021. Default was entered against the Wilsons on October 12, 2021. Subsequently, the Wilsons moved for an order setting aside entry of default based on attorney mistake. The motion to set aside entry of default was granted March 11, 2022. On March 21, 2022, the Wilsons filed a demurrer to AAE's complaint.

The Wilsons demur on the grounds that the 1st through 3rd C/A are uncertain and ambiguous; the court does not have jurisdiction of the subject of AAE's 5th and 6th C/A; the 5th and 6th C/A cannot be maintained because AAE failed to join a necessary party, the County of El Dorado; AAE's 5th and 6th C/A are premature; and AAE has not sufficiently pled facts that support a request for punitive damages.

The demurrer was served on AAE by email/electronic transmission on March 21, 2022.

Plaintiff opposes the demurrers on the following grounds: defendants Wilson's special demurrer fails to comply with Code of Civil Procedure, 430.60 as defendants have not specified in what particulars the complaint is uncertain, such as exactly how and why the compliant is uncertain or ambiguous and citing where such uncertainty is located in the complaint by page number and line number; the trespass to real property sufficiently identified against whom the cause of action is asserted, the nature of the claim, and the parties affected,

and it may be fairly assumed that defendants knew and it is presumptively within their knowledge when and how they entered onto plaintiff's property and are expected to clear this up through discovery and/or stipulations; the trespass to chattel cause of action is sufficiently specific in that plaintiff alleges in the Complaint at page 5, line 4 to page 6, line 7 in early 2020 plaintiff began construction of perimeter fencing and defendants responded to the fence construction by blading a road along the entire length of the Rattlesnake Bar easement destroying 150 feet of new fencing plaintiff just constructed; defendants assertion that the nuisance cause of action is uncertain, because it did not allege the scope of the easement, how and when the scope of the easement was exceeded, and which defendant exceeded the easement lacks merit, because the factual allegations pled against defendants sufficiently state a nuisance cause of action against defendants; plaintiff is not required to cite specific statutes in order to meet the requirements to avoid a special demurrer and only needs to allege facts that are sufficiently clear to apprise the defendants of the issues which they are to meet; the County is not a necessary party to this action as the existence of zoning codes and compliance with gate permits is irrelevant to the parties legal rights and duties set forth in their documents of title and plaintiff has obtained gate permits; the existence of local zoning codes related to maintenance of gates does not deprive the court of subject matter jurisdiction to determine whether the parties' title documents allow such gates in the first place and defendants cite no legal authority for such a proposition; the action is not premature, because zoning code compliance is an administrative matter beyond the scope of the relief sought in this action and private parties have no standing to assert a zoning code violation in a civil proceeding; the complaint adequately alleges facts supporting a claim for punitive damages; and an attack on the claim of punitive damages cannot be raised by demurrer and must be raised in a motion to strike.

Defendants Wilson replied to the opposition.

Demurrer Principles

"'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 2nd amended complaint.

Special Demurrer – Trespass to Real Property, Trespass to Chattel, and Nuisance Causes of Action

The Wilsons demur on the grounds that the 1st through 3rd causes of action for trespass to real property, trespass to chattel, and nuisance are uncertain and ambiguous.

"A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." (Code of Civil Procedure, 430.60.)

If a defendant seeks to have facts pled with particularity, that point should be raised by special demurrer. (Good v. State (1962) 57 Cal.2d 512, 514.)

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 927, p. 364; 1 Weil & Brown, Civil Procedure Before Trial (1990) § 7:85, p. 7-23.)" (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

"A special demurrer should be overruled where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *People v. Lim*, 18 Cal.2d 872, 882, 118 P.2d 472. All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the cause of action. *Smith v. Kern County Land Co.*, 51 Cal.2d 205, 209, 331 P.2d 645. While there are some uncertainties in counts II and III, they are largely matters which lie within the knowledge of defendants. A demurrer does not lie to such matters. *Turner v. Milstein*, 103 Cal.App.2d 651, 658, 230 P.2d 25." (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.)

"Even as against a special demurrer, a plaintiff is required only to 'set forth in his complaint the essential facts of his case with reasonable precision and with particularity sufficiently specific to acquaint the defendant of the nature, source, and extent of his cause of action.' *Goldstein v. Healy*, 187 Cal. 206, 210, 201 P. 462, 463; see also *Miller v. Pacific Constructors, Inc.*, 68 Cal.App.2d 529, 539, 157 P.2d 57. He need not particularize matters 'presumptively within the knowledge of the demurring' defendant. *Dumm v. Pacific Valves*, 146 Cal.App.2d 792, 799, 304 P.2d 738, 742." (Smith v. Kern County Land Co. (1958) 51 Cal.2d 205, 209.)

"The Supreme Court has consistently stated the guideline that 'a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.' (*Youngman v. Nevada Irrigation Dist.*, Supra, 70 Cal.2d at p. 245, 74 Cal.Rptr. at p. 401, 449 P.2d at p. 465; *Smith v. Kern County Land Co.*, Supra, 51 Cal.2d at p. 209, 331 P.2d 645.) It has also been stated that '(t)he particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided

by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff.' (*Jackson v. Pasadena City School Dist.*, 59 Cal.2d 876, 879, 31 Cal.Rptr. 606, 608, 382 P.2d 878, 880; *Burks v. Poppy Construction Co.*, 57 Cal.2d 463, 474, 20 Cal.Rptr. 609, 370 P.2d 313.) This seems particularly applicable to a wrongful death action where none of the plaintiff-heirs was present at the site of the fatal injury. ¶ Finally, it must be noted that the modern discovery procedures necessarily affect the amount of detail that should be required in a pleading. (See *Dahlquist v. State of California*, 243 Cal.App.2d 208, 212-- 213, 52 Cal.Rptr. 324.)" (Semole v. Sansoucie (1972) 28 Cal.App.3d 714, 719.)

""Trespass is an unlawful interference with possession of property." (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406, 235 Cal.Rptr. 165.) The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (See CACI No. 2000.)" (Ralphs Grocery Co. v. Victory Consultants, Inc. (2017) 17 Cal.App.5th 245, 261–262.)

"Dubbed by Prosser the "little brother of conversion," the tort of trespass to chattels allows recovery for interferences with possession of personal property "not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered." (Prosser & Keeton, Torts (5th ed.1984) § 14, pp. 85-86.) ¶ Though not amounting to conversion, the defendant's interference must, to be actionable, have caused some injury to the chattel or to the plaintiff's rights in it. Under California law, trespass to chattels "lies where an intentional interference with the possession of personal property has proximately caused injury." (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1566, 54

Cal.Rptr.2d 468, italics added.) In cases of interference with possession of personal property not amounting to conversion, "the owner has a cause of action for trespass or case, and may recover only the actual damages suffered by reason of the impairment of the property or the loss of its use." (*Zaslow v. Kroenert*, supra, 29 Cal.2d at p. 551, 176 P.2d 1, italics added; accord, *Jordan v. Talbot* (1961) 55 Cal.2d 597, 610, 12 Cal.Rptr. 488, 361 P.2d 20.) In modern American law generally, "[t]respass remains as an occasional remedy for minor interferences, *resulting in some damage*, but not sufficiently serious or sufficiently important to amount to the greater tort" of conversion. (Prosser & Keeton, Torts, supra, § 15, p. 90, italics added.) ¶] The Restatement, too, makes clear that some actual injury must have occurred in order for a trespass to chattels to be actionable. Under section 218 of the Restatement Second of Torts, dispossession alone, without further damages, is actionable (see id., par. (a) & com. d, pp. 420- 421), but other forms of interference require some additional harm to the personal property or the possessor's interests in it. (Id., pars. (b)-(d).) "The interest of a possessor of a chattel in its inviolability, unlike the similar interest of a possessor of land, is not given legal protection by an action for nominal damages for harmless intermeddlings with the chattel. In order that an actor who interferes with another's chattel may be liable, his conduct must affect some other and more important interest of the possessor. *Therefore, one who intentionally intermeddles with another's chattel is subject to liability only if his intermeddling is harmful to the possessor's materially valuable interest in the physical condition, quality, or value of the chattel, or if the possessor is deprived of the use of the chattel for a substantial time, or some other legally protected interest of the possessor is affected as stated in Clause (c).* Sufficient legal protection of the possessor's interest in the mere inviolability of his chattel is afforded by his privilege to use reasonable force to protect his possession against even harmless

interference." (Id., com. e, pp. 421-422, italics added.)" (Intel Corp. v. Hamidi (2003) 30 Cal.4th 1342, 1350-1351.)

"Nuisance is the interference "with the comfortable enjoyment of life or property." [FN 35.] In order to recover damages for nuisance the plaintiff must prove the defendant's "invasion of the plaintiff's interest in the use and enjoyment of the land was *substantial,* i.e., that it caused the plaintiff to suffer 'substantial actual damage.' " [FN 36.] The interference '"must also be unreasonable.'" [FN 37.] The test for determining whether the plaintiff has suffered an unreasonable interference with the use and enjoyment of his property "is whether the gravity of the harm outweighs the social utility of the defendant's conduct." [FN 38.] ¶ FN35. Civil Code section 3479. ¶ FN36. *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938, 55 Cal.Rptr.2d 724, 920 P.2d 669. ¶ FN37. *San Diego Gas & Electric Co. v. Superior Court, supra,* 13 Cal.4th at 938, 55 Cal.Rptr.2d 724, 920 P.2d 669. ¶ FN38. *San Diego Gas & Electric Co. v. Superior Court, supra,* 13 Cal.4th at page 938, 55 Cal.Rptr.2d 724, 920 P.2d 669." (Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles (2004) 117 Cal.App.4th 1138, 1154.)

The verified complaint alleges facts sufficient to state causes of action for trespass, trespass to chattel and nuisance in paragraphs 11-15, 22-34, and 37-54. The verified complaint alleges that these causes of action arose from all of the defendants alleged conduct, such as defendants objecting to plaintiff fencing its own property boundary; defendants contending that fencing could not be constructed on the boundaries of the Highway 49 and Rattlesnake Bar easements and plaintiff could not fence along the common boundary with the Crist property for any reason; defendants taking the position that plaintiff was mandated to set its perimeter fencing along the easterly boundary of the Rattlesnake Bar easement effectively ceding the entire 50 foot wide easement to defendants' exclusive use; in early 2020 plaintiff

began construction of perimeter fencing on the portion of its property that was not previously fenced in order to contain its livestock and exclude predators; gates were installed or designed to be installed where necessary to accommodate existing or future easement use; the fencing was also designed to prevent trespassing, which was a common occurrence during plaintiff's ownership of the property; plaintiff constructed the perimeter fence around its property with the intent to raise livestock on its property as the term is used in Code of Civil Procedure, § 1021.9; defendants bladed a new dirt road from the end of the existing Highway 49 easement west to the Crist property and constructed that road solely on plaintiff's property, even though the Highway 49 easement corridor is centered on the common boundary line of the plaintiff's property and the Byrd property; a road was bladed by defendants without encroachment permits or grading permits for the Rattlesnake Bar easement; as the Rattlesnake Bar easement road was bladed, defendants intentionally and without permission or excuse, entered onto and trespassed upon plaintiff's property in areas outside the 50 foot wide deeded easement area; during the blading of the Rattlesnake Bar easement road, defendants maliciously and without legal right destroyed 150 feet of new fencing plaintiff had just constructed on its property; defendants engaged in that conduct with the intent to frustrate plaintiff's intent to raise livestock on its own property; when blading the Rattlesnake Bar easement road, defendants cut a substantial number of tree limbs and unreasonably left debris scattered about the ground both inside and outside the Rattlesnake Bar easement corridor; since the dispute arose between the parties, defendants have repeatedly, intentionally, and spitefully left the pre-existing gate on the Highway 49 easement open and unlocked, thereby subjecting plaintiff's property to trespassers and frustrating plaintiff's plans to raise livestock on its property; defendants trespassed on plaintiff's property by destroying plaintiff's fencing, blading the easement roads outside of a reasonable interpretation of the easement, allowing

defendants' pets to enter onto plaintiff's property without plaintiff' permission, defendants and their agents entered plaintiff's property to destroy its fencing thereby damaging plaintiff's property, and defendants' acts exceeded and were not contemplated by any legal right of defendants to be on plaintiff's property; the defendants trespassed to plaintiff's chattel by destruction of plaintiff's fencing without consent; and defendants' alleged acts constituted a nuisance as defendants exceeded the scope of the easements, which harmed plaintiff by depriving plaintiff of the free use of its property and unduly burdening its property.

The allegations of the verified complaint allege all defendants, including defendants Wilson, were guilty of the alleged misconduct. The verified complaint sets forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficient to acquaint defendants Wilson with the nature, source, and extent these causes of action asserted against them.

The demurrers to the trespass to real property, trespass to chattel, and nuisance causes of action are overruled.

5th Cause of Action for Quiet Title to Real Property and 6th Cause of Action for Declaratory Relief

Defendants argue that the court lacks jurisdiction to consider the 5th cause of action for quiet title to real property and 6th cause of action for declaratory relief and to determine whether gates can be maintained on the easements as the court cannot determine whether the gates meet the requirements of El Dorado County Code of Ordinances, § 130.30.090, which requires a permit to install a gate or fencing across or on the easements; the 5th cause of action for quiet title to real property and 6th cause of action for declaratory relief cannot be maintained as the County of El Dorado is a necessary party; and those causes of action are premature, because plaintiff has not exhausted its potential remedies to sue the County over the denial of a gate permit.

- Court's Subject Matter Jurisdiction

"The California Supreme Court has defined subject matter jurisdiction thusly: 'Subject matter jurisdiction ... is the power of the court over a cause of action or to act in a particular way.' [Citations.] By contrast, the lack of subject matter jurisdiction means the entire absence of power to hear or determine a case; i.e., an absence of authority over the subject matter. [Citations.] Where the evidence is not in dispute, a determination of subject matter jurisdiction is a legal question subject to de novo review." (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42, 12 Cal.Rptr.3d 711.) ¶ Subject matter jurisdiction may not be " ' "conferred by consent, waiver, agreement, acquiescence, or estoppel." ' [Citation.]" (*Totten, supra,* 154 Cal.App.4th at p. 47, 64 Cal.Rptr.3d 357.) As noted above, " '[t]he adequacy of the court's subject matter jurisdiction must be addressed whenever that issue comes to the court's attention.' [Citation.]" (*Id.* at p. 46, 64 Cal.Rptr.3d 357; see *In re Gloria A., supra,* 213 Cal.App.4th at p. 481, 152 Cal.Rptr.3d 550.) Thus, it may be considered for the first time on appeal (*People v. Lara* (2010) 48 Cal.4th 216, 225, 106 Cal.Rptr.3d 208, 226 P.3d 322 (*Lara*)), and requires no particular procedural vehicle. (*Great Western Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1417–1418, 88 Cal.Rptr.2d 828.) "[A]ny judgment or order rendered by a court lacking subject matter jurisdiction is 'void on its face ...' [Citation.]" (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196, 25 Cal.Rptr.3d 298, 106 P.3d 958 (*Varian*).)" (Saffer v. JP Morgan Chase Bank, N.A. (2014) 225 Cal.App.4th 1239, 1248.)

The Third District Court of Appeal has stated: "A quiet title action seeks to declare the rights of the parties in realty. A trial court should ordinarily resolve such dispute. This accords with the rule that a trial court should not dismiss a regular declaratory relief action when the plaintiff

loses, but instead should issue a judgment setting forth the declaration of rights and thus ending the controversy. (See *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 729, 146 P.2d 673; *Haley v. L.A. County Flood Control Dist.* (1959) 172 Cal.App.2d 285, 292-294, 342 P.2d 476.) As stated in a case involving Western's predecessors, " 'The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.' " (*Yuba Invest. Co. v. Yuba Consol. Gold Fields* (1926) 199 Cal. 203, 209, 248 P. 672; see *Gazos Creek Mill etc. Co. v. Coburn* (1908) 8 Cal.App. 150, 153, 96 P. 359 ["all parties were before the court with their grievances"].)" (Western Aggregates, Inc. v. County of Yuba (2002) 101 Cal.App.4th 278, 305.)

""A quiet title action seeks to declare the rights of the parties in realty.... ' "The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to." ' " (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 305, 130 Cal.Rptr.2d 436, quoting *Yuba Invest. Co. v. Yuba Consol. Gold Fields* (1926) 199 Cal. 203, 209, 248 P. 672.) "A description of the parties' legal interests in real property is all that can be expected of a judgment in an action to quiet title." (*Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 218, 243, 70 Cal.Rptr.2d 399.) Title is quieted "as to legal interests in property." (*Id.* at p. 242, 70 Cal.Rptr.2d 399.) It follows that absent an interest in the property, a party has no standing to ask the court to quiet title in the property or to obtain damages for the cloud on title. An action to cancel a trustee's deed or other instrument purportedly transferring title is no different. "One without any title or interest in the property cannot maintain such an action." (*Osborne v. Abels* (1939) 30 Cal.App.2d 729, 731, 87 P.2d

404.)" (Emphasis added.) (Chao Fu, Inc. v. Wen Ching Chen (2012) 206 Cal.App.4th 48, 58-59.)

"Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought." (Code of Civil Procedure, § 1060.)

As stated earlier, defendants argue that the court lacks subject matter jurisdiction to determine whether gates can be maintained on the easement as the court cannot determine whether the gates meet the requirement of El Dorado County Code of Ordinances, § 130.30.090, which requires a permit to install a gate or fencing across or on the easement.

Plaintiff incorporates by reference all prior allegations of the verified complaint into the 5th cause of action to quiet title and the 6th cause of action for declaratory relief. (Complaint, paragraphs 59 and 62.) Plaintiff seeks to quiet title to its property and for declaratory relief in relation to its property rights to maintain the security of its property and to confine and raise its

livestock in light of the defendants' easement rights with fencing and gates. (Complaint, paragraphs 60, 61, 63, and 64.)

The complaint broadly seeks a determination of property rights of each of the parties related to the use and enjoyment of plaintiff's property subject to the easement and defendants' rights related to the easement. A right of the servient estate owner to have a gate to secure its livestock on its property for raising and grazing considering the grant of a non-exclusive road easement to dominant estate owners does not require the court to necessarily determine whether any gates meet regulatory requirements. All the court will determine is whether under easement real property law, the servient estate owner has a right to place gates across the easement to secure the property owner's livestock, provided all applicable legal requirements are met.

"Easements are a type of servitude; the "extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." (Civ. Code, § 806.) For express easements like those contained in the deed reservations, " 'only those interests expressed in the grant and those necessarily incident thereto pass from the owner of the fee.' " (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 867, 274 Cal.Rptr. 678, 799 P.2d 758 (*Camp Meeker*), superseded by statute on another ground, as stated in *Pacific Bell v. Public Utilities Com.* (2000) 79 Cal.App.4th 269, 281, 93 Cal.Rptr.2d 910.)" (Pear v. City and County of San Francisco (2021) 67 Cal.App.5th 61, 71.)

"The owner of the dominant tenement must use his or her easements and rights in such a way as to impose as slight a burden as possible on the servient tenement. (*Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 356, fn. 17, 27 Cal.Rptr.2d 613, 867 P.2d 724.) Every incident of ownership not inconsistent with the easement and the enjoyment of the same is reserved to the owner of the servient estate. (*Golden West Baseball Co. v. City of Anaheim* (1994) 25

Cal.App.4th 11, 35, 31 Cal.Rptr.2d 378; *City of Los Angeles v. Ingersoll–Rand Co.* (1976) 57 Cal.App.3d 889, 893–894, 129 Cal.Rptr. 485.)" (Emphasis added.) (Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 702.) "The conveyance of an easement limited to roadway use grants a right of ingress and egress and a right of unobstructed passage to the holder of the easement. A roadway easement does not include the right to use the easement for any other purpose. (See *Marlin v. Robinson* (1932) 123 Cal.App. 373, 377, 11 P.2d 70.) When the easement is "nonexclusive" the common users "have to accommodate each other." (*Applegate v. Ota* (1983) 146 Cal.App.3d 702, 712, 194 Cal.Rptr. 331.) An obstruction which unreasonably interferes with the use of a roadway easement can be ordered removed "for the protection and preservation" of the easement. (*Id.* at pp. 712–713, 194 Cal.Rptr. 331.)" (Emphasis added.) (Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 703.)

"Plaintiff's easement merely gives her the right to use the area for ingress and egress. Defendant is not required to make any changes from the natural condition of the ground, or any grading thereof necessary to permit its reasonable use. Those matters will have to be done, if necessary, by plaintiff, and, as the easement is nonexclusive, in such manner as not to obstruct or prevent the reasonable use thereof by defendant. Defendant has the right to use the land defined by the court for any use not inconsistent with plaintiff's easement. *Parks v. Gates*, 186 Cal. 151, 199 P. 40." (Emphasis added.) (Greiner v. Kirkpatrick (1952) 109 Cal.App.2d 798, 803.)

The Third District Court of Appeal has held: "We recognize that " '[u]nless it is expressly stipulated that the way shall be an open one, or it appears from the terms of the grant or the circumstances that such was the intention, the owner of the servient estate may erect gates across the way, if they are constructed so as not unreasonably to interfere with the right of passage.' " (*McCoy v. Matich* (1954) 128 Cal.App.2d 50, 53, 274 P.2d 714, quoting 73 A.L.R.

779.) [FN 5.] However, "[w]here an easement under a grant is specific in its terms, '[i]t is decisive of the limits of the easement' [citations]." (*Wilson v. Abrams, supra,* 1 Cal.App.3d at p. 1034, 82 Cal.Rptr. 272.) ¶ FN5. "[T]he grant of a way without reservation of the right to maintain gates does not necessarily preclude the servient estate owner from having such gates, and unless it is expressly stipulated in the grant that the way shall be an open one, or unless a prohibition of gates is implied from the circumstances, the servient owner may maintain a gate across the way if necessary for the use of the servient estate and if the gate does not unreasonably interfere with the right of passage." (Annot., Right to Maintain Gate or Fence Across Right of Way (1973) 52 A.L.R.3d 9, 15, § 2, and cases cited.)" (Emphasis added.) (Van Klompenburg v. Berghold (2005) 126 Cal.App.4th 345, 350.)

The court clearly has subject matter jurisdiction to determine whether the servient owner plaintiff as a matter of the record title grant of the easements may maintain a gate across the easement if necessary for the use of the servient estate, provided legally mandated requirements for such gates are adhered to, and if the gate does not unreasonably interfere with the right of passage. The demurrers of lack of subject matter jurisdiction to determine the 5th and 6th causes of action are overruled.

- El Dorado County as Necessary Party

Defendants argue that the County is a necessary party to the 5th and 6th causes of action, because the County determines whether fencing or gates may be installed on the easements and the County has already made that decision by denial of a gate permit

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: ¶ * * * (d) There is a defect or misjoinder of parties…." (Code of Civil Procedure, § 430.10(d).)

"Where the question of who are necessary parties defendant is raised by demurrer, it is to be determined ordinarily by reference to the allegations of the complaint." (Gill v. Johnson (1932) 125 Cal.App. 296, 300.)

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party." (Code of Civil Procedure, § 389(a).)

"If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." (Code of Civil Procedure, § 389(b).)

"…"[a] person is an indispensable party [only] when the judgment to be rendered necessarily must affect his rights." *Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d

232, 262, 73 P.2d 1163.)" (Olszewski v. Scripps Health (2003) 30 Cal.4th 798, 808-809.) and in determining if a party is an indispensible party due to the inability to provide complete relief in the action, the focus is on whether complete relief can be afforded the parties named in the action. (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1101.)

The Third District Court of Appeal has stated: "The first clause, the "complete relief" clause, focuses not on whether complete relief can be afforded all possible parties to the action, but on whether complete relief can be afforded the parties named in the action. (*Countrywide Home Loans, Inc. v. Superior Court*, supra, 69 Cal.App.4th at pp. 793-794, 82 Cal.Rptr.2d 63.)" (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1101.)

The Third District also stated: "Under subdivision (b) of section 389 we must determine whether a necessary party to the action is indispensable. ¶ A party is indispensable only in the "conclusory sense that in [its] absence, the court has decided the action should be dismissed. Where the decision is to proceed the court has the power to make a legally binding adjudication between the parties properly before it." (Cal. Law Revision Com. com., 14 West's Ann.Code Civ. Proc. (1973 ed.) foll. § 389, p. 222.) The Supreme Court has warned that courts must " 'be careful to avoid converting [section 389 from] a discretionary power or a rule of fairness ... into an arbitrary and burdensome requirement which may thwart rather than accomplish justice.' [Citation.]" (*Countrywide Home Loans, Inc. v. Superior Court*, supra, 69 Cal.App.4th at p. 793, 82 Cal.Rptr.2d 63, quoting *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521, 106 P.2d 879.)" (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1105.)

"" 'The controlling test for determining whether a person is an indispensable party is, "Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party. [Citation.]"

[Citation.] More recently, the same rule is stated, "A person is an indispensable party if his or her rights must necessarily be affected by the judgment." ' " (*Tracy Press, Inc. v. Superior Court,* (2008) 164 Cal.App.4th 1290, 1298, 80 Cal.Rptr.3d 464.)" (Majd v. Bank of America, N.A. (2015) 243 Cal.App.4th 1293, 1309.)

First, the court cannot consider the argument of defendants Wilson that a gate permit was denied, as that purported fact is not alleged in the complaint and defendants have not requested judicial notice of such a fact.

When any ground for objection to a complaint 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).)

Second, the court is not required to reach the issue of County gate permits in order to enter a judgment determining the defendants' and plaintiff's relative property rights and obligations of record land title concerning the subject easements and whether the grant of the easements left defendant with the right to fence the perimeter of its own property and have gates in order to contain and protect its livestock that plaintiff is raising on its own property, subject to County laws related to gates. Complete relief can be afforded the parties named in the action related to the record title rights and obligations in a judgment in this action without necessarily affecting the Count's right to enforce the gate permit ordinance. The rights to be determined by a judgment in this action will be the rights and obligations of the parties to the litigation subject to any gate permit ordinance.

The necessary party demurrers to the 5th and 6th cause of action are overruled.

- Prematurity

As stated above, the purported gate permit denial is not properly considered in this demurrer proceeding. Furthermore, the court does not have to reach the issue of whether the

County must be sued related to whether a gate permit must be issued by the County in order for the court to enter a judgment determining the defendants' and plaintiff's relative property rights and obligations of record land title concerning the subject easements and whether the grant of the easements left defendant with the right to fence the perimeter of its own property and have gates in order to contain and protect its livestock that plaintiff was raising on its own property, subject to County laws related to gates.

The action is not premature and the prematurity demurrers to the 5th and 6th causes of action are overruled.

Punitive Damages Claim

The Wilsons' demurrer to AAE's request for punitive damages is overruled. A motion to strike, not a demurrer, is the procedure to attack an improper claim for punitive damages. "[A] demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint." (Venice Town Council v. City of Los Angeles (1996) 47 Cal.App.4th 1547, 1561–1562.)

TENTATIVE RULING # 8: DEFENDANTS WILSON'S DEMURRERS TO PLAINTIFF ALL ABOUT EQUINE ANIMAL RESCUE'S COMPLAINT ARE OVERRULED. 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 CONTACT THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. A LONG CAUSE HEARING WILL BE SET ON ONE OF THE THREE MUTUALLY AGREEABLE DATES. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME Law and Motion Calendar – Department Nine (8:30 a.m.) May 27, 2022, 3 BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT," WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT'S 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, MAY 27, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT