1. MATTER OF HILL 22CV0410

OSC Re: Name Change.

Petitioner stated at the hearing on May 13, 2022, that she had a livescan on Monday. A livescan is not a request for a CLETS print out.

There was no CLETS record print out in the file at the time this ruling was prepared. The court is required by statute to review such record. (See Code of Civil Procedure, § 1279.5(e).) Under the procedure of this court, the petitioner is to request such a printout from the local law enforcement agency and have the agency directly forward to the court the record.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 10, 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. HIGH HILL RANCH v. COUNTY OF EL DORADO 21CV0178

Review Hearing Re: Receipt of Administrative Record.

High Hill Ranch appeals from the administrative decision in a code enforcement case. Plaintiff lodged the purported administrative record on May 26, 2022. The court is unable to find any certification of the purported record by the County in the court's file.

The matter is continued to June 24, 2022, in Department 9 at 8:30 a.m. by stipulation.

TENTATIVE RULING # 2: UPON REQUEST OF HIGH HILL RANCH, LLC, THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 24, 2022, IN DEPARTMENT NINE.

3. RUSSELL v. GUMINA PC-20210360

Hearing Re: Default Judgment.

Plaintiff Special Administrator of the Estate of Heather Gumina filed an action against defendant asserting causes of action for wrongful death and survival action on behalf of the surviving heirs of the decedent. The complaint alleges that defendant, the spouse of the decedent, assaulted the decedent twice in two days, with the second assault resulting in injuries that caused her death. The complaint requests an award of general and special damages according to proof and punitive damages.

The proof of service filed on September 10, 2021, declares that defendant was personally served the summons, complaint, notice of case assignment, and case management form at the Placerville Jail on September 1, 2021. The proof of service filed on November 2, 2021, declares that defendant was personally served the statement of damages at the Placerville Jail on October 19, 2021. Default was entered against defendant on November 8, 2021.

The statement of damages, dated September 28, 2021, was filed on December 10, 2021. It asserts that plaintiff is seeking an award of $1,500,000 in damages for loss of society and companionship; $10,000 for funeral expenses; $1,000,000 for future contributions; $600,000 for value of personal service, advice, or training; and $1,000,000 for punitive damages.

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).)

Where damages are sought for personal injuries or wrongful death the plaintiff is statutorily mandated to serve a statement of damages on defendants in the same manner as a summons that specifies the separate amounts of general and special damages sought to be recovered from the defendants (Code of Civil Procedure, § 425.11(d).) and either the complaint or the statement of damages must separately state the amounts of special and general damages sought. (See Schwab v. Southern California Gas Co. (2004) 114 Cal.App.4th 1308, 1322; and Schwab v. Rondel Homes, Inc. (1991) 53 Cal.3d 428, 434.)

The Third District Court of Appeal has held with regard to sufficient allegations of the amount of damages in order to enter a default judgment: "Under *Greenup* and *Schwab,* this is insufficient to give the requisite notice of the amount of damages claimed. In order to meet the notice requirements imposed by due process, a plaintiff must either give notice of the damages claimed in a separate statement of damages or by the allegations of the complaint. To pass constitutional muster, the complaint must either allege a specific dollar amount of damages in the body or prayer or at the very least allege the boilerplate damages are "in an amount that exceeds the jurisdictional requirements" of the superior court. An allegation seeking damages "according to proof" fails to fulfill the mandate of section 425.11 or of due process. After all, a "defendant is entitled to actual notice of the liability to which he or she may be subjected, a reasonable period of time before default may be entered." (*Schwab, supra,* 53 Cal.3d at p. 435, 280 Cal.Rptr. 83, 808 P.2d 226.)" (Parish v. Peters (1991) 1 Cal.App.4th 202, 216.)

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.)" (Emphasis added.) (Carlsen v. Koivumaki (2014) 227 Cal.App.4th 879, 898.)

"Plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed. (Code of Civ.Proc., § 585; *Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560, 33 Cal.Rptr. 415.)" (Barragan v. Banco BCH (1986) 188 Cal.App.3d 283, 302.)

""It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is not in plaintiffs' interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868, 121 Cal.Rptr.2d 695 (*Heidary*).)" (Electronic Funds Solutions v. Murphy (2005) 134 Cal.App.4th 1161, 1179.)

- Proof of General and Special Damages

"Wrongful death is a statutorily created cause of action for pecuniary loss brought by heirs against a person who causes the death of another by a wrongful act or neglect. It is original in nature and does not represent a right of action that the deceased would have had if the deceased had survived the injury. (Code Civ.Proc., § 377; *Reyna v. San Francisco* (1977) 69 Cal.App.3d 876, 138 Cal.Rptr. 504.) It is a cause of action for the heir who recovers for the pecuniary loss suffered on account of the death of the relative. (Id. at p. 882, 138 Cal.Rptr. 504.)" (Jacoves v. United Merchandising Corp. (1992) 9 Cal.App.4th 88, 105.)

"A survivor claim is also a statutory cause of action; however, unlike a wrongful death claim, the survival statutes do not *create* a cause of action but merely prevent the abatement of the

decedent's cause of action and provide for its enforcement by the decedent's personal representative or successor in interest. (§§ 377.20, 377.30; *Grant v. McAuliffe* (1953) 41 Cal.2d 859, 864, 264 P.2d 944.) Damages for a survivor claim include punitive damages and all the decedent's losses incurred prior to death, but exclude any award for the decedent's pain or suffering. (§ 377.34.) ¶ There is but one survivor cause of action belonging to the decedent that is brought on behalf of the decedent by the decedent's personal representative or successor in interest. (§§ 377.20, 377.30.)" (San Diego Gas & Elec. Co. v. Superior Court (2007) 146 Cal.App.4th 1545, 1553.)

There is no evidence in the court's file establishing the claimed amounts of general and special damages in the statement of damages, or any amounts of such damages.

Unless plaintiff presents evidence at the hearing to establish the amounts of special and general damages incurred by the decedent's heirs and the damages sustained by decedent for the survival cause of action, the court would have no alternative other than to deny any judgment for general and special damages as plaintiff would not have met the burden to prove the amount of damages.

- Proof of Punitive Damages

In assessing punitive damages, the damages awarded must bear a reasonable relationship to the net assets of the defendants. (Little v. Stuyvesant Life Ins. Co. (1977) 67 Cal.App.3d 451, 469.) The factors to consider in determining the amount of punitive damages include the nature of defendant's acts and the wealth of the defendant. (Michaelson v. Hamada (1994) 29 Cal.App.4th 1566, 1593.) The amount awarded must be supported by substantial evidence of the defendant's financial condition. (Adams v. Murakami (1991) 54 Cal. 3d 105, 116.) In the absence of evidence of defendant's net worth, the court can not properly assess an amount for punitive damages. Without such evidence, the amount imposed would be based on mere

speculation. Sound public policy should preclude awards based on mere speculation. (Adams, supra at page 114.)

While a statement of damages that includes a claim for punitive damages sets the limit on the amount of punitive damages the court may award, the court must still determine under the law the amount of punitive damages that appears just under the evidence produced at the default prove-up hearing. (Code of Civil Procedure, § 585(b) and 6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 169, pages 609-610.) "Only evidence in support of the allegations of the complaint is admissible. (*Jackson v. Bank of America* (1986) 188 C.A.3d 375, 387, 233 C.R. 162.) If the evidence is sufficient to support those allegations, the court must enter judgment for the plaintiff. (*Csordas v. United Slate Tile & Composition Roofers* (1960) 177 C.A.2d 184, 186, 2 C.R. 133.) If the evidence does not support the allegations, the court will deny a default judgment. (*Taliaferro v. Hoogs* (1963) 219 C.A.2d 559, 560, 33 C.R. 415.) (See *Johnson v. Stanhiser* (1999) 72 C.A.4th 357, 361, 85 C.R.2d 82 [at prove-up hearing trial judge erroneously applied preponderance of evidence standard in determining whether plaintiff was entitled to damages; correct standard requires that plaintiff merely establish prima facie case, which plaintiff did through sworn supplemental statement and numerous exhibits detailing relationship with defendant]; *Kahn v. Lasorda's Dugout* (2003) 109 C.A.4th 1118, 1124, 135 C.R.2d 790 [trial court has discretion to accept copy of promissory note where original is lost].)" (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 170, pages 610-611.) Plaintiff must produce evidence of the net worth of the defendant for the court to determine an appropriate punitive damages amount.

Absent evidence of defendant's net worth, the court can not properly assess an amount for punitive damages. Unless the plaintiff presents evidence of defendant's net worth prior to the

hearing, the court will have no alternative other than to deny the request for a judgment awarding punitive damages.

There was no admissible evidence before the court to establish the amount of general damages and the net worth of defendant at the hearing on May 6, 2022. Plaintiff's counsel stated plaintiff was willing to withdraw the punitive damages claim. The court stated that it needs declarations or testimony to establish the damages claimed and it needs numbers. Counsel stated she will file an amended declaration. At the time this ruling was prepared there was no amended declaration in the court's file.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 10, 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. CASTANEDA v. SWANSON PC-20160161

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

Plaintiff filed this action on April 4, 2016. Judicial Council Emergency Rule 10 provides that notwithstanding any other law, including Code of Civil Procedure, § 583.310, all civil actions filed on or before April 6, 2020, had a total time of five years and 180 days to bring the action to trial, which extended the time to bring this action to trial to October 4, 2021. On August 19, 2021, the El Dorado County Superior Court issued the 6th Administrative Order Granting Emergency Relief due to COVID-19 and the State of Emergency due to the Caldor Fire, which suspended civil jury trials during the period of August 20, 2021, and September 17, 2021, with trials to be set on or after September 21, 2021. On September 14, 2021, the El Dorado County Superior Court issued the 7th Administrative Order Granting Emergency Relief due to COVID-19 and the State of Emergency due to the Caldor Fire, which suspended civil jury trials during the period of September 18, 2021, and October 18, 2021, with trials to be set on or after October 19, 2021. On January 18, 2022, the El Dorado County Superior Court issued the 8th Administrative Order Granting Emergency Relief due to COVID-19, which suspended civil jury trials during the period of January 19, 2022, to February 19, 2022, with trials to be set on or after February 20, 2022. On February 9, 2022, the El Dorado County Superior Court issued an Administrative Order suspending civil jury trials during the period of February 20, 2022, to March 21, 2022, with trials to be set on or after March 22, 2022, due to the local widespread condition of COVID-19 and the rising positivity rate in El Dorado County.

Defendant Hansen moves to dismiss the case on the ground that the case was not brought to trial within the statutorily mandated time. Defendant Hansen argues there is no written

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

Defendant Swanson filed a statement of joinder in the motion to dismiss on May 2, 2022.

Plaintiff opposes the motion on the January current trial date of January 17, 2023 falls within the five year statute to bring the matter to trial for the following reasons after the Court's 6th administrative order was issued and receipt from the court of available dates to reset the trial, plaintiffs alerted the parties and the court that the dates exceeded the five year limitation to try the case; the court responded that it intended to order the time to try the case extended; the defendants did not object; the court issued a minute order on September 28, 2021 extending the five year statute to the new trial date when it is set; on October 25, 2021 the parties presented the stipulated trial date of August 9, 2022 in open court, and the matter was set for trial on August 9, 2022; on November 4, 2022 [sic] counsel for defendant Swanson emailed the parties indicating that defendant Swanson was unavailable during the month of August 2022 and requested a continuance by agreement of the parties; plaintiff's counsel

agreed to the continuance; the parties ultimately decided on January 2023; no objection or request to dismiss was raised; the written stipulation to continue the trial was executed by all parties on December 17, 2021 and the court issued an order setting trial for January 17, 2023.

Defendant Hansen replied to the opposition.

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

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

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

"It is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action but that all parties shall cooperate in bringing the action to trial or other disposition. Except as otherwise provided by statute or by rule of court adopted pursuant to statute, the policy favoring the right of parties to make stipulations in their own interests and

the policy favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter." (Code of Civil Procedure, § 583.130.)

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

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

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

The Law Revision Commission Comments to Section 583.340(c) states in relevant part, "Subdivision (c) codifies the case law "impossible, impractical, or futile" standard. The provisions of subdivision (c) must be interpreted liberally, consistent with the policy favoring trial on the merits. See Section 583.130 (policy statement). * * * ¶ Under Section 583.340 the time within which an action must be brought to trial is tolled for the period of the excuse, regardless whether a reasonable time remained at the end of the period of the excuse to bring the action to trial. This overrules cases such as State of California v. Superior Court, 98

Cal.App.3d 643, 159 Cal.Rptr. 650 (1979), and Brown v. Superior Court, 62 Cal.App.3d 197, 132 Cal.Rptr. 916 (1976). [17 Cal.L.Rev.Comm. Reports 905 (1984)]."

The court takes judicial notice that at the issues conference on August 6, 2021 the court confirmed the ten day jury trial would commence on August 30, 2021; and that on August 19, 2021 the Court issued the 6th administrative order granting emergency relief due to COVID-19 and the Caldor Fire, which vacated the civil jury trial dates set to commence between August 20, 2021 and September 17, 2021 and stated those trial were to be reset to a date after September 21, 2021.

After the Court's 6th administrative order was issued and receipt from the court of available dates to reset the trial, plaintiffs alerted the parties and the court that the dates exceeded the five-year limitation to try the case; and the court responded that it intended to order the time to try the case extended. (See Declaration of Plaintiff's Counsel in Opposition, paragraphs 4-6.)

On September 28, 2021, the court set a trial setting conference for October 25, 2021, and extended the five-year statute to bring the case to trial to the date the new trial date was set due to the uncertainty of when civil jury trials will be conducted by the court. (Plaintiff's Exhibit F.) On October 25, 2021, the parties stipulated in open court to set the trial date as August 9, 2022. The court set the trial on that date. (Declaration of Plaintiff's Counsel in Opposition, paragraph 9.) The parties, including defendant Hansen, stipulated in writing to vacate the August 9, 2022, trial date and continue the trial date to January 17, 2023, which was entered as an order on December 17, 2021. The written stipulation did not expressly agree to extend the time within which this action must be brought to trial. (Plaintiff's Exhibit H.) However, as stated earlier, concerns about the five-year statute in relation to the setting of trial dates were raised during the long history of attempting to get the case to trial during the extraordinary circumstances of the past couple of years.

Citing Munoz v. City of Tracy (2015) 238 Cal.App.4th 354, 361-362, plaintiff argues that the parties stipulation extending the trial date to January 2022, which was beyond the 5-year statute as extended, necessarily amounted to an agreement that waived the right to seek dismissal under the five-year statute and such is consistent with the policies enunciated in Section 583.130.

In reversing the trial court's dismissal of the case as not having been brought to trial even though the parties had entered a written stipulation for continue the trial date, the Third District Court of Appeal held: ""An action shall be brought to trial within five years after the action is commenced against the defendant." (§ 583.310.) An action which is not brought within the prescribed period must be dismissed. (§ 583.360, subd. (a).) These requirements are mandatory "and are not subject to extension, excuse, or exception except as expressly provided by statute." (§ 583.360, subd. (b).) The purpose of the five-year dismissal statute is to prevent the prosecution of stale claims where defendants could be prejudiced by loss of evidence and diminished memories of witnesses. (*Lewis v. Superior Court* (1985) 175 Cal.App.3d 366, 375, 220 Cal.Rptr. 594.) The statute also protects defendants from the annoyance of having unmeritorious claims against them unresolved for unreasonable periods of time. (*Ibid.*) While the goals of the five-year limit are somewhat analogous to those underlying statutes of limitation, the five-year limit involves policy considerations that are somewhat less crucial because once an action has been filed defendants can take steps to protect their interests. (*General Motors Corp. v. Superior Court of Los Angeles County* (1966) 65 Cal.2d 88, 91, 52 Cal.Rptr. 460, 416 P.2d 492.) ¶ Under section 583.330, the five-year period may be extended by written stipulation or oral agreement made in open court. (§ 583.330.) Section 583.330 does not, by its terms, require that a stipulation extending the five-year period include any particular formalities. Our consideration of whether a stipulation

extends the five-year limit under section 583.330 is guided by section 583.130, which states that "the policy favoring the right of parties to make stipulations in their own interests and the policy favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter." ¶ Munoz contends that the present case is governed by our Supreme Court's opinion in *Miller & Lux Inc. v. Superior Court* (1923) 192 Cal. 333, [219 P. 1006] *(Miller & Lux)*. In *Miller & Lux,* the parties entered into a series of stipulations continuing the trials of three related actions, both in writing and by oral agreement in open court. (*Id.* at pp. 335–336, 219 P. 1006.) The last written stipulation continued the trials to March 24, 1920. (*Id.* at p. 336, 219 P. 1006.) The last oral agreement in open court continued the trials to September 28, 1920. (*Id.* at p. 337, 219 P. 1006.) On October 19, 1920, the trial court on its own motion continued the trials to November 15, 1920. (*Ibid.*) On November 10, 1920, after expiration of the parties' last extension, the defendants filed a motion to dismiss pursuant to former section 583. [Footnote omitted.] (*Miller & Lux,* at p. 337, 219 P. 1006.) The trial court denied the motion and the defendants filed petitions for writs of mandate, which were granted. (*Ibid.*) ¶ In granting the petitions, the *Miller & Lux* court explained: "It is, of course, well settled that any stipulation of the defendants extending the statutory period did not operate as a waiver for all future time of the right of defendants to a dismissal after the expiration of the extended period. [Citation.] Neither did any of the written stipulations entered into within the five-year period continuing the trials from time to time within the statutory period have the effect of extending the time beyond the five-year period. [Citations.] A written stipulation, however, expressly waiving the benefit of the section, *or postponing the case to a time beyond the statutory period, would have the effect of extending the statutory period to the date to which the trial was postponed.* [Citation.]" (*Miller & Lux, supra,* 192 Cal. at pp. 337–338,

219 P. 1006, italics added.) ¶ Relying on the italicized language in the preceding paragraph, Munoz argues that a stipulation extending the five-year period must *either* expressly waive section 583.310 *or* continue the trial to a specific date beyond the five-year period. In the present case, Munoz observes, the stipulation continued the trial to a specific date outside of the five-year period. Therefore, Munoz concludes, the stipulation properly extended the five-year period, and there was no need for the City to "expressly waive" the benefit of section 583.310, as any such waiver would have been superfluous. We agree and conclude that the parties' written stipulation extended the time for bringing the case to trial, and had "the effect of extending the statutory period to the date to which the trial was postponed." (*Miller & Lux, supra,* 192 Cal. at p. 338, 219 P. 1006; see *J.C. Penney Co. v. Superior Court* (1959) 52 Cal.2d 666, 669, 343 P.2d 919 (*J.C. Penney*).) ¶ The City attempts to distinguish *Miller & Lux* on the grounds that the Supreme Court construed former section 583, which was repealed in 1984 and replaced by section 583.310 et seq. (Stats.1984, ch. 1705, §§ 4–5, p. 6176.) We conclude that the differences between the present and former versions of the statute are not so significant as to preclude reliance on *Miller & Lux.* (Compare § 583.330 ["The parties may extend the time within which an action must be brought to trial ... [b]y written stipulation"] with former § 583, subd. (b) [establishing an exception to the five-year dismissal rule "where the parties have filed a stipulation in writing that the time may be extended"].) In any event, a number of cases have recognized that the parties may stipulate to extend the five-year period by expressly extending the date for trial to a date beyond the five-year limit, including *Sanchez,* on which the City relies. (See *Taylor v. Shultz* (1978) 78 Cal.App.3d 192, 195, 144 Cal.Rptr. 114 [parties stipulated to extension of statutory deadline by expressly extending date for trial to a date beyond the five-year limit; case properly dismissed when trial did not take place on or before stipulated date]; *In re Thatcher's Estate* (1953) 120 Cal.App.2d

811, 813, 262 P.2d 337 [parties stipulated to extension of statutory deadline by expressly extending the date for trial to a date beyond the five-year limit].) Relying on *Miller & Lux,* our Supreme Court reiterated that a stipulation extending the five-year period "must be written and extend in express terms the time of trial to a date beyond the five-year period or expressly waive the right to a dismissal" in *J.C. Penney*. (*J.C. Penney, supra,* 52 Cal.2d at p. 669, 343 P.2d 919, citing *Miller & Lux, supra,* 192 Cal. at p. 338, 219 P. 1006.) The Court of Appeal for the Second Appellate District quoted *J.C. Penney* in *Sanchez,* which postdates the 1984 revision to former section 583. (*Sanchez, supra,* 109 Cal.App.4th at p. 1269, fn. 3, 135 Cal.Rptr.2d 869.) As noted, the trial court relied on *Sanchez* to grant the City's motion to dismiss. [FN 3.] ¶ FN 3. *Sanchez* did not involve the validity or interpretation of a stipulation to extend the five-year limit. (*Sanchez, supra,* 109 Cal.App.4th at p. 1269, fn. 3, 135 Cal.Rptr.2d 869.) Instead, *Sanchez* involved the application of section 583.340, which excludes certain periods from the five-year period for bringing a case to trial, including periods in which prosecution of the case would be "impossible, impracticable, or futile." (*Id.* at pp. 1271–1274, 135 Cal.Rptr.2d 869; § 583.340.) ¶ Although the parties do not directly address the issue, we acknowledge a potential ambiguity in the requirement that a written stipulation "extend in express terms the time of trial to a date beyond the five-year period or expressly waive the right to a dismissal." (*J.C. Penney, supra,* 52 Cal.2d at p. 669, 343 P.2d 919.) On the one hand, the phrase "extend in express terms the time of trial to a date beyond the five-year period" could refer to a specific date beyond the five-year period, as Munoz suggests. On the other hand, the phrase could require an express reference to the statute, or the five-year period, as the trial court apparently believed. Our Supreme Court has found that a stipulation to extend trial to a specific date beyond the five-year period *necessarily* waives the right of dismissal under former section 583. (*Smith v. Bear Valley Milling & Lumber Co.* (1945) 26

Cal.2d 590, 599, 160 P.2d 1 ["A stipulation to extend the time of trial beyond the five-year period necessarily waives the right to a dismissal of the action under section 583 which would otherwise accrue because of such delay."].) We have not identified any subsequent cases that reject this approach. (See generally 6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without Trial, § 383, p. 826.) Further, we conclude that it is consistent with the policies underlying section 583.130. ¶ As noted, section 583.130 establishes a general policy favoring the parties' right to make stipulations in their own interests. (§ 583.130.) Here, the parties stipulated to continue the trial date to June 16, 2014, more than six months after the expiration of the five-year period. Although the parties do not appear to have discussed the five-year deadline for bringing the case to trial, their stipulation "reflects a mutual intent to defer the proceedings," and "must be enforced to effectuate the whole of the instrument." (*Wheeler v. Payless Super Drug Stores, Inc.* (1987) 193 Cal.App.3d 1292, 1303, 238 Cal.Rptr. 885; see *General Ins. Co. v. Superior Court of Alameda County* (1975) 15 Cal.3d 449, 455–456, 124 Cal.Rptr. 745, 541 P.2d 289.) Section 583.130 also establishes a statutory preference for trial on the merits. (§ 583.130; see *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 509, 87 Cal.Rptr.2d 702, 981 P.2d 543 ["all things being equal, we deem it preferable to apply our decisions in such a manner as to preserve, rather than foreclose, a litigant's day in court on the merits of his or her action"].) Applying section 583.130, we conclude that the parties' written stipulation extended the time for bringing the case to trial to June 16, 2014. We therefore conclude that the trial court erred in granting the City's motion to dismiss." (Emphasis added.) (Munoz v. City of Tracy (2015) 238 Cal.App.4th 354, 358–362.)

Under the totality of the circumstances presented, the court finds that the parties' December 17, 2021 written stipulation to continue the trial date from August 9, 2022 to January 2023, a date beyond the five year statute as extended by the October 25, 2021 court order to the date

set for trial, August 9, 2022, necessarily waived the defendants' right of dismissal for failure to bring the matter to trial within five years for the purposes of trial commencing on January 17, 2023 as ordered by the court pursuant to that stipulation.

Defendants' motion to dismiss the action is denied.

Sanctions

"(a) A trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3." (Code of Civil Procedure, § 128.5(a).)

"(b) For purposes of this section: ¶ (1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section. ¶ (2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party." (Code of Civil Procedure, § 128.5(b).)

The safe harbor provision of Section 128.7(c) applies to Section 128.5 proceedings. "In urgency legislation enacted August 7, 2017 (Stats. 2017, ch. 169, § 1), the Legislature amended section 128.5 "to clarify the previous legislative intent." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 984 (2017-2018 Reg. Sess.), as amended April 20, 2017, p. 1.) [Footnote omitted.] Specifically as it relates to the issue presented by this appeal, rather than simply cross-referencing subdivision (c) of Section 128.7, as it formerly had, section 128.5, subdivision (f), was amended to import (with minor language modifications) the conditions and procedures contained in that provision, including in subdivision (f)(1)(B) a 21-day safe harbor

provision "[i]f the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected ...." [FN 12] ¶ FN 12. Section 128.5, subdivision (f)(1), now states, in part, "(A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay. [¶] (B) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected." ¶ The legislative reports accompanying this amendment confirm the Legislature's intent to include a safe harbor provision in former subdivision (f). (See *Eu v. Chacon* (1976) 16 Cal.3d 465, 470, 128 Cal.Rptr. 1, 546 P.2d 289 ["[a]lthough a legislative expression of the intent of an earlier act is not binding upon the courts in their construction of the prior act, that expression may properly be considered together with other factors in arriving at the true legislative intent existing when the prior act was passed"]; see also *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244, 62 Cal.Rptr.2d 243, 933 P.2d 507 ["the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them"]; *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1408, 156 Cal.Rptr.3d 771 [same].) ¶ Discussing the need for the amendment to former subdivision (f), the analysis of Assembly Bill No. 984 prepared for the Assembly Committee on the Judiciary explained that the committee had adopted several amendments to the 2014 legislation reviving section 128.5 "to ensure that Section 128.5 would

be 'read in harmony with the salutary cognate provisions of section 128.7.' " (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 984, *supra*, at p. 8.) The 2017 amendment, the report continued, "seeks to clarify the intent behind the enactment of AB 2494 ... and abrogate several of the holdings under *San Diegans* [*for Open Government*]." (*Ibid*.; see *id.* at p. 7 [interpretation of subdivision (f) by *San Diegans for Open Government* "is inconsistent with [its] legislative history"]; [Footnote omitted.] Sen. Com. on Judiciary, Rep. on Assem. Bill No. 984 (2017-2018 Reg. Sess.), as amended June 19, 2017, for hearing on June 27, 2017, p. 3. ["Since AB 2494 took effect, courts have interpreted provisions of Section 128.5 inconsistently and, at times, at odds with the intent of the Legislature. This bill seeks to address the apparent confusion in the courts and make the provisions of Section 128.5 completely clear."].) ¶ * * * * * ¶ In sum, former subdivision (f) required a party moving for sanctions to make the motion separately from other motions and requests and to describe the specific conduct alleged to be subject to sanctions, as specified in section 128.7, subdivision (c)(1). In addition, when the motion for sanctions was based on a purportedly frivolous complaint, written motion or court filing that could be withdrawn or on some other alleged action or tactic that could be appropriately corrected, former subdivision (f) required the moving party to comply with the safe harbor waiting provisions of section 128.7, subdivision (c)(1). Because Southern SARMs failed to provide Nutrition Distribution with the safe harbor opportunity to withdraw its first amended complaint before filing its motion for sanctions, the trial court properly denied the motion." (Emphasis added.) (Nutrition Distribution, LLC v. Southern Sarms, Inc. (2018) 20 Cal.App.5th 117, 129–130.)

The request for sanctions pursuant to Section 128.5 was not filed as a separate noticed motion as mandated by Section 128.5(f)(1)(A). Plaintiff was served notice of the hearing and the moving papers, at the latest, by electronic service on April 27, 2022, which is 44 days prior

to the hearing date on the motion to dismiss, which provided more than sufficient time for plaintiff to comply with the safe harbor provision set forth in Section 128.5(f)(1)(B). There is no admissible evidence by declaration that establishes plaintiff complied with the safe harbor provision by serving a notice of motion as provided in Section 1010, and not filing or presenting the motion to the court until 21 days after service of the motion where the motion to dismiss was not withdrawn. The proof of service of the opposition states it was served on defense counsels by email on May 27, 2021. The opposition was filed on the same date as it was served. Plaintiff's request for sanctions is denied due to plaintiff's failure to comply with requirements of Section 128.5.

TENTATIVE RULING # 4: DEFENDANTS HANSEN'S AND SWANSON'S MOTION TO DISMISS THE ACTION AGAINST THEM IS DENIED. PLAINTIFFS' REQUEST FOR AN AWARD OF SANCTIONS PURSUANT TO THE PROVISIONS OF CODE OF CIVIL PROCEDURE, § 128.5 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 10, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

5. OGDEN v. JOHNSON 22CV0494

Hearing Re: Preliminary Injunction

On April 11, 2022, plaintiffs Levi Ogden and Jacqueline Slight filed a complaint asserting causes of action for quiet title (1st and 6th C/A), declaratory relief – easement by necessity (2nd and 7th C/A), declaratory relief – implied easement (3rd and 8th C/A), declaratory relief – prescriptive easement (4th and 9th C/A), and declaratory relief – equitable easement (5th and 10th C/A) against defendant Phillip Johnson. Also on April 11, 2022, plaintiffs filed an ex parte application for temporary restraining order and preliminary injunction. On April 13, 2022, the court granted the application for temporary restraining order, enjoining defendant from preventing plaintiffs and their guests and invitees from using Eagle Mine Road in any way, and defendant is required to (1) remove all barriers along Eagle Mine Road, (2) provide access to the electronic gate, and (3) unlock the back gate. Pending is the hearing for preliminary injunction.

Plaintiffs argue the following in support of their application: plaintiffs are likely to succeed on their claim for a prescriptive easement as the road has been in existence for over 50 years and it has been used by property owners along the road to access their properties by driving across defendant's land; plaintiff Slight has used the road for over 30 years in an open and notorious manner to access plaintiff's residence, plaintiff never asked for permission to use the road, and plaintiff Ogden and plaintiff's predecessor in interest used the road without permission by driving to plaintiff's property on a regular and continuous basis; plaintiffs will be irreparably harmed if the injunction is not issued, because plaintiffs will lose all value of their properties, plaintiff Slight will be unable to drive to plaintiff's residence, if fire broke out in the area, plaintiffs will be unable to drive out from their properties, plaintiff Ogden will have no vehicular

access to his property and will be unable to tend and water his fruit orchard, and monetary compensation for such harms will be difficult to measure; and the relative interim harm to defendant is plaintiffs will be allowed to use the subject road as they have for 30 years.

Defendant opposes issuance of a preliminary injunction on the following grounds: plaintiffs are unlikely to succeed on their claims of prescriptive easement, because when defendant purchased the property it had two locked gates and there is no evidence that the plaintiff's use was hostile; defendant will be irreparably harmed if the preliminary injunction is granted which outweighs any harm to plaintiffs, because plaintiffs have access to Old Mine Road and plaintiff Slight's declaration that Eagle Mine Road is the only access to plaintiff Slight's property is by Eagle Mine Road is false; defendant will be harmed by the preliminary injunction by potential loss of livestock and unidentified vehicles speeding through the property damaging defendant's property due to dust and debris; and should a preliminary injunction be granted, the scope of the injunction should be limited to use of the "New Road" as it does not cross by defendant's personal residence, the gates should be locked at all times to prevent others from access, plaintiffs should be held liable for damages leaving the gates open or speeding through the property, hours of use should be limited to 6:00 a.m. to 6:00 p.m., and plaintiffs should be required to pay defendant $194.44 each month for maintenance of the road.

Plaintiffs replied to the opposition: the opposition has not denied that plaintiff Slight has used the Eagle Mine Road to access her property on a daily basis for over 30 years; the opposition does not deny that plaintiff Ogden and his predecessor in interest have used the road since 2014; plaintiffs will likely succeed on their claim of prescriptive easement as plaintiff Slight has declared she has used the subject road without asking for permission, the gates were never locked before, and the plaintiffs have used the subject road for far longer than the five year period required; plaintiffs will be irreparably harmed if the preliminary injunction is

denied, because the Old Mine Road crosses numerous parcels, plaintiffs have no prescriptive rights to use that road as they have always used Eagle Mine Road for access to their parcels, Old Mine Road is narrow and steep, requires four wheel drive, and is impassable in the winter snow; and the court should reject the defendant's request to limit the scope of the easement as there is no legal basis for mandating plaintiffs to use a "New Road" instead of the road they have used for many years, the Eagle Mine Road must be returned to its original location, there is no evidence or legal authority before the court to establish that defendant is entitled to be paid $194.44 per month as costs to maintain the Eagle Mine Road, and the request for limited hours of use of the subject road is ludicrous as plaintiff Slight uses the property as plaintiff's residence and plaintiff can not be compelled to live plaintiff's life on defendant's timetable.

Preliminary Injunction Principles

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." (Code of Civil Procedure, § 526(a).)

The general purpose of such an injunction is to preserve the status quo until there is a final determination of the matter on the merits. The term "status quo" has been defined to include the last actual peaceable, uncontested status which preceded the pending controversy. (Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995.)

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

"It is said: "To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should (it) be exercised in a doubtful case. . . ." (*Willis v. Lauridson*, 161 Cal. 106, 117, 118 P. 530, 535; *West v. Lind*, 186 Cal.App.2d 563, 569, 9 Cal.Rptr. 288; *Mallon v. City of Long Beach*, 164 Cal.App.2d 178, 190, 330 P.2d 423.)" (Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148.)

"The plaintiff bears the burden of presenting facts establishing the requisite reasonable probability: "[T]he drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury." (*Ancora–Citronelle Corp. v. Green, supra,* 41

Cal.App.3d at p. 150, 115 Cal.Rptr. 879.)" (Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.)

"The trial court considers two interrelated factors when deciding whether to issue preliminary injunctions: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286, 219 Cal.Rptr. 467, 707 P.2d 840; *IT Corp. v. County of Imperial, supra,* 35 Cal.3d at pp. 69–70, 196 Cal.Rptr. 715, 672 P.2d 121.) However, before the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable injury (6 Witkin, Cal.Procedure (3d ed. 1985) Provisional Remedies, § 254; *E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373, 106 P.2d 1) due to the inadequacy of legal remedies. (6 Witkin, *op. cit. supra,* § 253.)" (Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138.)

An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. (See Brownfield v. Daniel Freeman Marina Hospital (1989) 208 Cal.App.3d 405, 410.)

A trial court's decision on a motion for preliminary injunction is not a adjudication of the ultimate rights in controversy (Association for Los Angeles Deputy Sheriffs v. County of Los Angeles (2008) 166 Cal.App.4th 1625, 1634.); the order is not a determination of the merits of the case; and the order may not be given issue-preclusive effect with respect to the merits of the action (Upland Police Officers Ass'n v. City of Upland (2003) 111 Cal.App.4th 1294, 1300.).

With the above-cited legal principles in mind, the court will determine whether a preliminary injunction should be issued.

Easements by Prescription

The Third District Court of Appeal has stated: “We briefly review the elements of a prescriptive easement before addressing plaintiffs' contentions. Such elements are "(a) open and notorious use; (b) continuous and uninterrupted use; (c) hostile to the true owner; (d) under claim of right; and (e) for the statutory period of five years. (Civ.Code, § 1007; Code Civ.Proc., § 321)." (*Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593, 181 Cal.Rptr. 25; and see *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570, 199 Cal.Rptr. 773, 676 P.2d 584.)” (Connolly v. McDermott (1984) 162 Cal.App.3d 973, 976.)

“The plaintiffs are entitled to take advantage of the use made of the property in dispute by their predecessors in interest. (*Shonafelt v. Busath*, supra, 66 Cal.App.2d 5, 13—14, 151 P.2d 873.)” (Miller v. Johnston (1969) 270 Cal.App.2d 289, 295.)

“In the case at bench, the trier of fact has found the establishment of a prescriptive easement and not mere permissive use. The record is replete with evidence of usage of the Red roadway by the owners of the dominent parcel for many more years than five. There is no evidence of concealment or furtive conduct. There is strong and substantial direct evidence of an open and notorious use of the roadway to get to the property above. There has been a continuous and uninterrupted use of the roadway extended by the specific acts of use. “There has been no break in the essential attitude of mind required for adverse use.” (*Zimmer v. Dykestra*, supra, 39 Cal.App.3d at p. 432, 114 Cal.Rptr. 380.) Here, whenever the respondent (and its predecessors) needed the roadway from time to time, it made use of it; this is “a continuous use.” In *Hesperia Land & Water Co. v. Rogers* (1890) 83 Cal. 10, 11, 23 P. 196, recited in *Meyers v. Berven* (1913) 166 Cal. 484, 137 P. 260, that user used the roadway

under a claim of right to do so, and in such an obvious, open and notorious manner as to constitute an implied notice of claim. (*O'Banion v. Borba* (1948) 32 Cal.2d 145, 195 P.2d 10.) Here, the claim of right was from the inception of the use, as the servient owners knew. Thus, the evidence shows open, notorious, continuous and uninterrupted use hostile to the servient owner, under a claim of right from at least 1949 through 1974. "When one who claims an easement by prescription offers satisfactory evidence that all the required elements existed, the burden of showing that the use was merely permissive shifts to the owner of the land." (*Chapman v. Sky L'Onda Mutual Water Co.* (1945) 69 Cal.App.2d 667, 678, 159 P.2d 988.) This Briggs has failed to do. No permission was ever asked for nor was any given; no one ever questioned the right of the "users" to use the road. Respondent and its predecessors treated the roadway "as its own." (*LeDeit v. Ehlert* (1962) 205 Cal.App.2d 154, 163, 22 Cal.Rptr. 747.) The prescriptive right to use the road was acquired." (Twin Peaks Land Co. v. Briggs (1982) 130 Cal.App.3d 587, 593–594.)

"When a prescriptive easement has been acquired for a dominent parcel and such parcel is conveyed, the easement passes to the transferee." (Twin Peaks Land Co. v. Briggs (1982) 130 Cal.App.3d 587, 594.)

"The term "adverse" in this context is essentially synonymous with "hostile" and "under a claim of right." (*Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252, 41 Cal.Rptr.3d 32; *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 450, 17 Cal.Rptr.3d 135.) A claimant need not believe that his or her use is legally justified or expressly claim a right of use for the use to be adverse. [Footnote omitted.] (*Aaron, supra,* at p. 1252, 41 Cal.Rptr.3d 32; *Felgenhauer, supra,* at p. 450, 17 Cal.Rptr.3d 135.) Instead, a claimant's use is adverse to the owner if the use is made without any express or implied recognition of the owner's property rights. (*Sorensen v. Costa* (1948) 32 Cal.2d 453, 459, 196 P.2d 900; See 6 Miller & Starr, California

Real Estate (3d ed. 2012) Easements, § 15:35, p. 15–133.) In other words, a claimant's use is adverse to the owner if it is wrongful and in defiance of the owner's property rights. (See Bruce & Ely, *supra,* § 5:8, p. 5–28.)" (Windsor Pacific LLC v. Samwood Co., Inc. (2013) 213 Cal.App.4th 263, 270-271.)

"Claim of right does not require a belief or claim that the use is legally justified. (*Lord v. Sanchez* (1955) 136 Cal.App.2d 704, 707, 289 P.2d 41.) It simply means that the property was used without permission of the owner of the land. (*Ibid.*) As the American Law of Property states in the context of adverse possession: "In most of the cases asserting [the requirement of a claim of right], it means no more than that possession must be hostile, which in turn means only that the owner has not expressly consented to it by lease or license or has not been led into acquiescing in it by the denial of adverse claim on the part of the possessor. (3 Casner, American Law of Property (1952) Title by Adverse Possession, § 5.4, p. 776.) One text proposes that because the phrase " 'claim of right' " has caused so much trouble by suggesting the need for an intent or state of mind, it would be better if the phrase and the notions it has spawned were forgotten. (Cunningham et al., The Law of Property (Law. ed. 1984) Adverse Possession, § 11.7, p. 762.) Enloe testified that he had no discussion with the bank about deliveries being made over its property. The jury could reasonably conclude the Enloes used the bank's property without its permission. Thus they used it under a claim of right." (Emphasis added.) (Felgenhauer v. Soni (2004) 121 Cal.App.4th 445, 450.)

"The Sonis argue the gate shows the use of their property was not hostile. They cite *Myran v. Smith* (1931) 117 Cal.App. 355, 362, 4 P.2d 219, for the proposition that to effect a prescriptive easement the adverse user " ' "... must unfurl his flag on the land, and keep it flying, so that the owner may see, if he will, that an enemy has invaded his domains, and planted the standard of conquest." ' " ¶ But *Myran* made the statement in the context of what is

necessary to create a prescriptive easement. Here, as we have said, the jury could reasonably conclude the prescriptive easement was established prior to the erection of the fence and gate. The Sonis cite no authority for the proposition that even after the easement is created, the user must keep the flag of hostility flying. To the contrary, once the easement is created, the use continues as a matter of legal right, and it is irrelevant whether the owner of the servient estate purports to grant permission for its continuance." (Emphasis added.) (Felgenhauer v. Soni (2004) 121 Cal.App.4th 445, 450-451.)

Plaintiff Slight declared in support of the TRO and OSC Re: Preliminary Injunction: plaintiff owns certain real property on Eagle Mine Road; plaintiff and plaintiff's ex-spouse acquired the property in 1990 and began living there; they drove on Eagle Mine Road across defendant's property to get to and from their house on a daily basis; they never asked for or received permission from the owner of defendant's property to do so; sometime in 2020 defendant installed an electronic gate across the road at the entrance from Grizzly Flat Road; defendant provided plaintiff with an electronic gate opener, which allowed plaintiff to get through the gate; on March 2, 2022 plaintiff's friend attempted to leave plaintiff's residence after visiting and found the gate at the rear of defendant's property locked; plaintiff went to the gate to ask defendant to unlock it; defendant stated that someone had cut the lock the night before and he would not unlock the gate; he told plaintiff that if he found plaintiff on defendant's property, defendant would shoot plaintiff; Eagle Mine Road is the only way plaintiff can drive to plaintiff's residence and plaintiff has to park on Grizzly Flat Road and carry in groceries and other supplies by hand to her property; and plaintiff worries that should there be a fire in the area, she will be unable to remove her belongings from plaintiff's property. (Declaration of Jacqueline Slight in Support of TRO and OSC, paragraphs 2-6.)

Plaintiff Ogden declared in support of the TRO and OSC Re: Preliminary Injunction: plaintiff owns certain real property on Eagle Mine Road having purchased it in March 2019; due to some title issues, the grant deed transferring record title was not recorded until December 10, 2021; plaintiff has exclusively used Eagle Mine Road for access to plaintiff's property several times a month since it was purchased; prior to purchase, plaintiff used the road to visit his mother several times each month; on March 2, 2022, while delivering a load of rock to plaintiff's property, defendant blocked access to the property by locking a gate across the road and refusing to give plaintiff a key to the lock; defendant told plaintiff that plaintiff could no longer use the road; afterwards, defendant further blocked the road by placing logs across it; plaintiff has no way to drive to his property; and the property will lose all value to plaintiff should the TRO and preliminary injunction not be granted. (Declaration of Levi Ogden in Support of TRO and OSC, paragraphs 2-5.)

Attached to the plaintiffs' application for the TRO and OSC Re: Preliminary Injunction is plaintiff's counsel's declaration. Counsel authenticates Exhibits 1-3, which are a survey recorded on June 27, 1968 generally depicting the subject properties/parcels and a 40 foot easement that tracks the physical location of Eagle Mine Road (Plaintiffs' Exhibit 1); a parcel map recorded on October 5, 1972 that depicts plaintiffs' properties and a non-exclusive road and utility easement that tracks the physical location of Eagle Mine Road (Plaintiffs' Exhibit 2.); and a survey recorded on March 6, 1981 that depicts defendant's property/parcel, the plaintiffs' parcels/properties, and Eagle Mine Road, which is labeled as the approximate location of an existing dirt road and clearly connects the defendant's property to plaintiffs' properties (Plaintiffs' Exhibit 3.). (Declaration of Richard Sopp in Support of TRO and OSC, paragraphs 2-4; and Exhibits 1-3.)

Defendant declares in opposition: he owns certain real property on Grizzly Flat Road, which he obtained record title to on September 16, 2019; before defendant purchased the property defendant observed two gates on one end of the property that were secured by locks and keys; the previous owner did not disclose any information that other parcel owners should be allowed to enter and exit that property without permission, except for Frank Stenger, who had an express easement; plaintiffs have access to the main road by crossing through Old Mine Road instead of defendant's property; defendant has witnessed government vehicles use Eagle Mine Road to Access Old Mine Road and use Old Mine Road to access the main road; defendant initially provided plaintiff Slight with an access code to use the electronic gate to enter and exit defendant's property; plaintiff Slight failed to shut the gate properly, which posed a risk to defendant's livestock and personal property; defendant decided to revoke plaintiff Slight's access to the electronic gate; defendant has witnessed several vehicles speed through the road on defendant's property, which caused him fear for his family and livestock; and plaintiffs have not offered to pay for the maintenance and upkeep of the road and gates. (Declaration of Phillip Johnson in Opposition to Preliminary Injunction, paragraphs 2-11.)

Attached to the opposition are unauthenticated Defense Exhibits A-C, which are not admissible evidence.

Plaintiff Ogden declares in reply: plaintiff has traveled over Eagle Mine Road for over 30 years to visit his mother's property and since 2019 to access plaintiff's own property; for some time there was a single gate across the entrance from Grizzly Fat Road to Eagle Mine Road, however, the gate has never been locked; from time to time a lock or pin was inserted in the gate to make it appear to be locked but it was never actually locked; property owners along the road could always get through the gate without the need for a key or combination of any kind; there was a second gate to defendant's property located 20 feet from where the main gate was

located, but the property owners always used the main gate; driving a car over Eagle Mine Road to Old Mine Road is not possible, because both roads pass through numerous private properties over which plaintiff has no legal right to pass; the pathway is blocked by gates on both Eagle Mine Road and Old Mine Road as depicted on plaintiff's Exhibits 9 and 10 attached to the declaration; Old Mine Road is extremely steep, narrow and very rugged; a car without four wheel drive cannot make the trip over the road and it would be impassable with snow in the winter; in recent months defendant has done grading on defendant's property that appears to be an attempt relocate to Eagle Mine Road over defendant's property; the new path is narrow, very steep and would be very difficult to use during winter snows; the new path is depicted in plaintiff's exhibits 11 and 12 attached to the declaration; and over the time plaintiff has used Eagle Mine Road, plaintiff and the other property owners have maintained it from time to time as needed at a cost that never exceeded more than a few hundred dollars in any single year. (Declaration of Levi Ogden in Reply, paragraphs 2-5; and Plaintiff's Exhibits 9-12.)

Having read and considered the moving papers, opposition, reply, the declarations in submitted in support of, opposition to, and reply, and the properly authenticated Exhibits, the court finds plaintiffs have established irreparable harm will result if the preliminary injunction is denied; plaintiffs have established a very strong likelihood of success on the merits of this action; weighing the likelihood of the plaintiffs ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction, the balance tips in favor of granting the request for a preliminary injunction; and the court rejects the request to limit the scope of the preliminary injunction, except, perhaps, with regards to keeping the gates locked, provided the plaintiffs and their invitees have the ability to unlock the gates to use Eagle Mine Road to access the plaintiffs' properties.

TENTATIVE RULING # 5: PLAINTIFFS' APPLICATION FOR ISSUANCE OF A PRELIMINARY INJUNCTION IS GRANTED. THE COURT ORDERS A PRELIMINARY INJUNCTION ISSUED AS REQUESTED. 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 10, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. HAQQ v. HAWTHORNE SENIOR LIVING PC-20210300

Plaintiff's Motion for Preliminary Approval of Class Action and for Leave to File 1st Amended Complaint.

On June 9, 2021 plaintiff filed a representative action against defendant for penalties pursuant to Labor Code, §§ 2699(f) and 2699(a) asserting that defendant failed to pay overtime wages due to plaintiff and other non-exempt workers; failed to pay premium wages to plaintiff and other non-exempt employees who were denied rest periods; failed to pay premium wages to plaintiff and other non-exempt employees who were denied proper meal periods; failed to provide plaintiff and other non-exempt employees with wage statements that fully and accurately itemized the requirements as set forth in Labor Code, §§ 226(a) and 226.3; and failed to pay plaintiff all wages due upon separation from employment within the time frames required by Labor Code, §§ 201 and 202. Plaintiff also seeks to recover statutory civil penalties for violations of the Labor Code.

On April 4, 2022, plaintiff filed a notice of conditional settlement of the entire case, dependent on the court approval process for class and PAGA settlements.

Plaintiff moves for the court to preliminarily approve the settlement of the case; to set a schedule of dates for further proceedings, including the date for the final settlement approval hearing; to conditionally certify for settlement purposes only a settlement class and subclass; to approve the appointment of plaintiff as the class representative; to approve the appointment of a class counsel; to approve appointment of Simpluris, Inc. as settlement administrator; to preliminarily approve the allocation of $40,000 of the settlement to settle the PAGA claims; to approve the content and form of notice to the settlement class and to direct it be disseminated by the settlement administrator; and to permit plaintiff leave to file a 1st amended complaint that

adds class allegations and claims in order to comport with the release as provided in the parties' stipulation.

The proof of service declares that on May 5, 2022, the notice of hearing and moving papers were served by mail to plaintiff's counsel and by the online process on the PAGA filing website of the Labor Workplace Development Agency (LWDA) in compliance with the procedure imposed by the LWDA.

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

"A class action shall not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given in such manner as the court directs to each member who was given notice pursuant to subdivision (d) and did not request exclusion." (Civil Code, § 1781(f).)

"(d) If the action is permitted as a class action, the court may direct either party to notify each member of the class of the action. The party required to serve notice may, with the consent of the court, if personal notification is unreasonably expensive or it appears that all members of the class cannot be notified personally, give notice as prescribed herein by publication in accordance with Section 6064 of the Government Code in a newspaper of general circulation in the county in which the transaction occurred." (Civil Code, § 1781(d).)

"A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." (Rules of Court, Rule 3.769(a).)

""Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,* 221 F.R.D. 523, 525 (C.D.Cal.2004). At the final approval stage, the

primary inquiry is whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir.1998). Having already completed a preliminary examination of the agreement, the court reviews it again, mindful that the law favors the compromise and settlement of class action suits. *See, e.g., Churchill Village, LLC. v. Gen. Elec.,* 361 F.3d 566, 576 (9th Cir.2004); *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir.1992); *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir.1982). Ultimately, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants and their strategies, positions, and proof." *Hanlon,* 150 F.3d at 1026. ¶ An objector to a proposed settlement agreement bears the burden of proving any assertions they raise challenging the reasonableness of a class action settlement. *United States v. State of Oregon,* 913 F.2d 576, 581 (9th Cir.1990). The court iterates that the proper standard for approval of the proposed settlement is whether it is fair, reasonable, adequate, and free from collusion—not whether the class members could have received a better deal in exchange for the release of their claims. *See Hanlon,* 150 F.3d at 1027 ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.")." (Noll v. eBay, Inc. (N.D. Cal. 2015) 309 F.R.D. 593, 602.)

"Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion." (Rules of Court, Rule 3.769(c).)

"The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing." (Rules of Court, Rule 3.769(d).)

"If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." (Rules of Court, Rule 3.769(e).)

"California law controls in this case. While we are not bound to follow the certification requirements of Rule 23, we note that California courts have recognized that "class action settlements should be scrutinized more carefully if there has been no adversary certification." (*Dunk, supra,* 48 Cal.App.4th at p. 1803, fn. 9, 56 Cal.Rptr.2d 483.) This reflects concerns that the absent class members, whose rights may not have been considered by the negotiating parties, be adequately protected against fraud and collusion. (*Id.* at pp. 1801, 1807, fn. 19, 56 Cal.Rptr.2d 483; *Officers for Justice v. Civil Service Com'n., etc.* (9th Cir.1982) 688 F.2d 615, 624.) However, these concerns are satisfied by a careful fairness review of the settlement by the trial court. Even in the federal cases cited by Doherty, pre-certification settlements are routinely approved if found to be fair and reasonable. (See *In re Baldwin–United Corp.* (S.D.N.Y.1984) 105 F.R.D. 475, 478; *Mars Steel Corp. v. Continental Illinois Nat. Bank* (7th Cir.1987) 834 F.2d 677, 681; *In re Beef Industry Antitrust Litigation* (5th Cir.1979) 607 F.2d 167, 174; *Hanlon v. Chrysler Corp., supra,* 150 F.3d at pp. 1019, 1030.) The possibility of abuse in such cases is "held in check by the requirement that the judge determine the fairness of the settlement before he can approve it." (*Mars Steel Corp. v. Continental Illinois Nat. Bank, supra,* 834 F.2d at p. 681.) As we discuss more fully below, among the factors considered by the court in evaluating fairness is whether the settlement is the result of an arm's length negotiating process and whether class members have reacted favorably or unfavorably to the proposed settlement. In addition, in this case it is clear from the record that the court carefully considered the remedies provided by the settlement to each subclass of class members in determining fairness. We conclude that even bearing in mind the heightened need for class

protection in pre-certification settlements, the court did not abuse its discretion here." (Emphasis added.) (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240.)

The settlement agreement provides: defendant will pay a gross settlement amount of $850,000; plaintiff's counsel shall be paid $283,333.33 representing 1/3 of the gross settlement amount and counsel shall be reimbursed up to $15,000 for litigation costs that are supported by adequate documentation; the class administrator is to be paid administration fees which shall be no more than $20,000; the class representative is to be paid a service award of $15,000 in addition to the class representative's individual settlement payment, FLSA settlement payment, and PAGA settlement payment; $40,000 is to be allocated to the PAGA payment, with 75% paid to the LWDA and the remaining 25% to make PAGA settlement payments to the members of the PAGA aggrieved employees group; a formula for payment to the PAGA aggrieved employees is set forth in the settlement agreement that takes into account the individual employee's eligible PAGA workweeks in the PAGA claim period divided by the total eligible workweeks in the PAGA claim period attributable to the entire class times the PAGA settlement fund; and each class member is entitled to an individual settlement payment consisting of a share of the net settlement amount as set forth in a specified formula in the settlement agreement.

Absent opposition it appears appropriate under the circumstances presented to grant preliminary approval of the class settlement as requested.

Leave to File a 1st Amended Complaint

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion,

after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code of Civil Procedure, § 473(a)(1).)

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" (Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530.)

The settlement agreement provides at paragraph 7.1 that permits plaintiff to move to court for leave to file a 1st amended complaint in the form attached as Exhibit B to the settlement agreement.

It appears appropriate under the circumstances presented to

TENTATIVE RUING # 6: PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND FOR LEAVE TO FILE 1ST AMENDED COMPLAINT IS GRANTED. THE PARTIES ARE TO SUBMIT SUGGESTED HEARING DATES FOR THE FINAL SETTLEMENT HEARING PRIOR TO OR AT THE JUNE 10, 2022, HEARING. THE COURT WILL SET THE EXACT DATE AND TIME FOR THE FINAL SETTLEMENT APPROVAL HEARING AT THE HEARING AT 8:30 A.M. ON FRIDAY, JUNE 10, 2022, IN DEPARTMENT NINE. PLAINTIFF IS TO FILE AN EXECUTED ORIGINAL 1ST AMENDED COMPLAINT IN THE FORM SET FORTH IN EXHIBIT B OF THE SETTLEMENT AGREEMENT AND SERVE

DEFENDANT WITH A COPY OF THAT 1ST AMENDED COMPLAINT. DEFENDANT IS NOT REQUIRED TO FILE A RESPONSIVE PLEADING TO THE 1ST AMENDED COMPLAINT AS REQUESTED IN THE MOVING PAPERS. 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 10, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

7. MATTER OF GALLARDO 22CV0508

Petition to Approve Compromise of Disputed Claim of Minor.

TENTATIVE RULING # 7: UPON REQUEST OF THE PETITIONING PARENT, THIS MATTER WAS PREVIOUSLY CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 1, 2022, IN DEPARTMENT NINE.

8. MATTER OF GALLADRO 22CV0509

Petition to Approve Compromise of Disputed Claim of Minor.

TENTATIVE RULING # 8: UPON REQUEST OF THE PETITIONING PARENT, THIS MATTER WAS PREVIOUSLY CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 1, 2022, IN DEPARTMENT NINE.

9. PETITION OF J.G. WENTWORTH ORIGINATIONS 22CV0530

Petition to Approve Transfer of Rights to Payment.

The payee of a structured settlement annuity has agreed to sell and transfer to petitioner an unknown amount of payments to be paid over an unstated period of time in exchange for an unstated amount.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code, §§ 10134, et seq. on the ground that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Insurance Code, 10137(a).)

"No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied." (Insurance Code, § 10136(a).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) The transfer of the structured settlement payment rights is fair and

reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

"A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express written findings by the court that: ¶ (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents. ¶ (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing. ¶ (3) The transferee has provided the payee with a disclosure form that complies with Section 10136 and the transfer agreement complies with Sections 10136 and 10138. ¶ (4) The transfer does not contravene any applicable statute or the order of any court or other government authority. ¶ (5) The payee reasonably understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Section 10136. ¶ (6) The payee reasonably understands and does not wish to exercise the payee's right to cancel the transfer agreement." (Insurance Code, § 10139.5(a).)

"When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents, the court shall consider the totality of the circumstances, including, but not limited to, all of the following: ¶ (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account

the payee's age, mental capacity, legal knowledge, and apparent maturity level. ¶ (2) The stated purpose of the transfer. ¶ (3) The payee's financial and economic situation. ¶ (4) The terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. ¶ (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the payee still needs those future payments to pay for that future care and treatment. ¶ (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. ¶ (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. ¶ (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee's future financial obligations for maintenance and support of the payee's dependents, specifically including, but not limited to, the payee's child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the court's consideration. ¶ (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the

payee's stated objectives, are fair and reasonable. ¶ (10) Whether the payee completed previous transactions involving the payee's structured settlement payments and the timing and size of the previous transactions and whether the payee was satisfied with any previous transaction. ¶ (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. ¶ (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. ¶ (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. ¶ (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Insurance Code, §10139.5(b).)

At the time this ruling was prepared there was no payee's declaration submitted in support of the petition setting forth admissible evidence which provides the court with the facts required to assess the statutory factors and make the determinations and findings required by statute.

A payee's declaration was untimely filed and served on May 31, 2022, which is only ten days prior to the hearing date. The hearing must be continued.

The petitioner has redacted from the initial petition and documents attached thereto information critical to the court's consideration of and ruling on the petition, such as the total number of payments to be sold and transferred, the time period during which those payments are to be paid by the annuity, the total value of the payments, the present value of the payments, the amount to be paid to the payee by petitioner for those payments, the discount rate applied, the equivalent interest rate that the payee would pay had the payee borrowed the money and paid it back in installments with each of the annuity payments, the expenses the payee has been charged, if any, and the remaining schedule of payments that have not been sold and transferred.

This lack of necessary critical information is exacerbated by the petition's disclosure that the payee petitioned for and obtained court approval of 14 sales/transfers of her annuity payment rights during the period of December 1998 through October 2020. (See Petition, page 8, footnote 1.) This extensive history of sales of payment rights raises a question with the court as to whether there remains sufficient income for the payee to live on such that the court can justifiably find that it is in the best interest of the payee to authorize the proposed undisclosed transfer of payments.

Although an amended petition and supporting documents were filed on June 1, 2021, that document was not in the court's file at the time this ruling was prepared and was filed untimely as it was filed only nine days before the hearing date.

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 2 court days when served by express mail. (Emphasis the court's. (Insurance Code, §10139.5(f)(2) and Code of Civil Procedure, § 1013(c).)

The proofs of service in the court's file declare that on April 21, 2022 petitioner served notice of the hearing, the petition, and supporting documents on the beneficiary/payee of the

structured settlement payments, the annuity issuer and the payment obligor by mail and overnight mail; on May 16, 2022 an amended petition and supporting documents were served by mail and overnight mail on the beneficiary/payee of the structured settlement payments, the annuity issuer and the payment obligor; and on May 31, 2022 the payee's declaration in support of the petition was served by mail and overnight mail on the beneficiary/payee of the structured settlement payments, the annuity issuer and the payment obligor.

TENTATIVE RULING # 9: DUE TO THE UNTIMELY FILED AMENDED PETITION AND UNTIMELY FILED AND SERVED PAYEE'S DECLARATION IN SUPPORT OF THE PETITION, THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 1, 2022, IN DEPARTMENT NINE.

10. DITLEVSEN v. PEDERSEN PC-20140312

Motion to Enter Proposed Judgment of Plaintiff Ditlevsen and Defendant Vetter.

Plaintiff's action against defendants for injuries allegedly arise from two car accidents that occurred within a day of each other. At the conclusion of the jury trial, the jury returned a special verdict finding that defendant Pedersen's negligence was a substantial factor in causing harm to plaintiff Ditlevsen; and that the damages attributable to defendant Pedersen are past economic loss in the total amount of $4,505, representing medical expenses of $4,005 and lost wages of $500, no future economic loss, $2,250 for past non-economic loss, including pain and mental suffering, and no future non-economic loss, including pain and mental suffering. The jury's special verdict also found that defendant Vetter's negligence was a substantial factor in causing harm to plaintiff; and that the damages attributable to defendant Vetter are past economic loss in the total amount of $64,517.34, representing medical expenses of $58,017.34 and lost wages of $6,500, future economic loss in the total amount of $303,000, representing $300,000 for future medical expenses and $3,000 for household services, $75,000 for past non-economic loss, including pain and mental suffering, and future non-economic loss in the amount of $75,000, including pain and mental suffering.

On December 13, 2019, the court entered judgment in the amount of $6,755 as to defendant Pedersen and $517,517.34 as to defendant Vetter. The court further stated that the jury found that each defendant was severally liable to plaintiff with no finding of joint liability; plaintiff shall recover costs of suit against defendants in a sum according to proof; and pursuant to Code of Civil Procedure, § 998 defendant Pedersen shall recover the costs of experts and prejudgment interest against plaintiff in a sum to be determined according to proof.

On July 6, 2020, the court entered an amended judgment addressing the costs awarded to defendant Pedersen pursuant to Code of Civil Procedure, § 998. The judgment found that defendant Pedersen was entitled to $88,697.21 and deducting the plaintiff's award of $6,755 and plaintiff's costs of $2,828.12, defendant Pedersen was to recover $79,114.04 from plaintiff.

Plaintiff appealed from the judgment arguing that the entire award of damages should have been imposed jointly and severally against both defendants. In an unpublished opinion entered on December 9, 2021, the Third District Court of Appeal agreed in part with plaintiff's argument in that the jury's damages award in the special verdicts establish that the jury found defendants were both substantial causes of harm to plaintiff's neck and upper back, but the harm to plaintiff's lower back, a herniated disk, was caused only by the second accident. The Third District declined to reweigh the evidence. (Appellate Opinion, page 10.) The Third District found that while the verdict forms did not explicitly ask the jury the causation issue concerning the herniated disk in plaintiff's lower back; the verdicts as interpreted through the evidence and instructions demonstrate the the jury believed the Pedersen accident caused plaintiff harm to her neck and upper back, but did not cause or contribute to the herniated disk in her lower back, because, if the jury believed the first accident involving defendant Pedersen caused the herniated disk, the jury would have awarded future economic and non-economic damages, or, at the very least, awarded past medical expenses beyond the first emergency room visit; and, therefore the jury found the herniated divisible from the injuries to plaintiff's neck and upper back. (Appellate Opinion, pages 11 and 12.) The Third District found that defendant Pedersen was jointly and severely liable for the damages resulting from plaintiff's neck and upper back injuries with 25% allocated to Pedersen and 75% to Vetter. (Appellate Opinion, pages 12-13.) The Third District concluded at pages 14-15: "In sum, we agree with plaintiff that the court's judgment does not conform with the verdicts; however, we disagree with plaintiff regarding the

meaning of the verdicts. The jury found Pedersen and Vetter were both a substantial factor in causing plaintiff's harm to her neck and upper back, but only Vetter was a substantial factor in causing the herniated disk in plaintiff's lower back. Accordingly, defendants are jointly and severally liable for plaintiff's injuries to her neck and upper back and Vetter is severally liable for the injury to plaintiff's lower back." The judgment was reversed and remanded for further proceedings consistent with the opinion and each party was to bear their own costs on appeal.

Defendant Vetter's proposed judgment following appeal expressly holds: economic damages for harm to plaintiff's neck and upper back are $29,507.02 for past medical expenses and lost earnings with defendant Pedersen solely liable for past economic losses of $4,505 and jointly and severally liable for an additional $25,502.02 of past economic damages consisting of past medical expenses for plaintiff's neck and upper back damage; and, therefore, defendant Pederson is not entitled to recover any costs from plaintiff under Section 998.

Plaintiff Ditlevsen's brief in favor of the proposed judgment submitted by plaintiff and defendant Vetter also asserts that contrary to the jury's special verdict finding that defendant Pedersen was only liable for $4,005 in past medical expenses, based upon the plaintiff's Exhibit 14-02, which was not submitted, the jury really found joint and several liability for $29,507.02 in medical bills related to the neck and upper back injuries. (See Plaintiff's and Defendant Vetter's Brief in Support of Proposed Judgment, page 4, line 10 to page 5, line 24.)

Defendant Pedersen argues in opposition: other than the modification ordered by the Court of Appeal, the prior judgment is final and may not be relitigated; plaintiff and defendant Vetter waived the issue that the jury verdict relating to the amount of damages awarded for the neck and upper back injuries was inadequate and not supported by the evidence by not raising the issue before the jury was excused, in an motion for new trial, or in the appeal; defendant

Pedersen's proposed revised judgment reflects the jury verdicts as construed by the Court of Appeal, with defendant Pedersen jointly and severally liable for $4,505 in damages for plaintiff's neck and upper back injuries and defendant Pedersen only liable for 25% of the non-economic damages of $2,250, amounting to $562.50, pursuant to the provisions of Code of Civil Procedure, §1431.2(a); the plaintiff's ordinary costs award should be entered jointly and severally against both defendants and not just defendant Pedersen; and the interest on the judgment should run from December 13, 2019, the date of the entry of the original judgment as provided in Code of Civil Procedure, § 685.020(a); Snapp v. State Farm Fire and Cas. Co. (1964) 60 Cal.2d 816, 818-819; and Felczer v. Apple, Inc. (2021) 63 Cal.App.5th 406, 417.

Defendant Pedersen proposes that judgment be entered finding that defendants Pedersen and Vetter are jointly and severally liable for plaintiff's injuries to her neck and upper back, with 25% of fault attributed to defendant Pedersen and 75% attributed to defendant Vetter; the economic damages arising from the injuries to plaintiff's upper neck and back amounts to $4,505, representing medical expenses of $4,005 and lost wages of $500, no future economic loss, and $2,250 for past non-economic loss, including pain and mental suffering; that defendant Pedersen is severally liable for 25% of the non-economic damages of $2,250 for the harm arising from plaintiff's neck and upper back injuries, amounting to $562.50, and defendant Vetter is severally liable for 75% of the non-economic damages of $2,250 for the harm arising from plaintiff's neck and upper back injuries, amounting to $1,687.50; that both defendants Pedersen and Vetter are jointly and severally liable for plaintiff's ordinary costs incurred in the action; and that applying the Section 998 costs recoverable by defendant Pedersen, judgment is entered in favor of defendant Pedersen in the amount of $88,134.71.

Defendant Vetter asserts in reply that the law of the case set forth in the the appellate opinion makes defendants Vetter and Pedersen liable for all damages suffered by plaintiff due

to the neck and back injuries, therefore, the court must modify the judgment to include all medical expenses related to the neck and upper back in the judgment entered against defendant Pedersen and defendant Vetter.

The Third District Court of Appeal has held: ""Where a reviewing court reverses a judgment with directions ... the trial court is bound by the directions given and has no authority to retry any other issue or to make any other findings. Its authority is limited wholly and solely to following the directions of the reviewing court." (*Rice v. Schmid* (1944) 25 Cal.2d 259, 263, 153 P.2d 313 (*Rice*); see *Tsarnas v. Bailey* (1962) 205 Cal.App.2d 593, 595, 23 Cal.Rptr. 336; *Carter v. Superior Court* (1950) 96 Cal.App.2d 388, 391, 215 P.2d 491 ["The courts have repeatedly adhered strictly to the rule.... Any proceedings had or judgment rendered contrary to such specific directions would be void"].) ¶ "The appellate court clerk's issuance of the remittitur effects the transfer of jurisdiction to the lower court. [Citation.] The reviewing 'court has no appellate jurisdiction over its own judgments, and it cannot review or modify them after the cause has once passed from its control by the issuance of the remittitur' [citation], although in very limited circumstances the remittitur may be recalled. (Rule 25(d).) At the same time, the terms of the remittitur define the trial court's jurisdiction to act. 'The order of the appellate court as stated in the remittitur, "is decisive of the character of the judgment to which the appellant is entitled." ' " (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774, 98 Cal.Rptr.2d 1, 3 P.3d 286, fn. 5 (*Snukal*); see *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701, 107 Cal.Rptr.2d 149, 23 P.3d 43; *Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982, 128 Cal.Rptr.2d 403 [directions are "binding on the trial court and *must* be followed. Any material variance ... is unauthorized and void"].) ¶ According to the California Supreme Court, the rule requiring a trial court to follow the terms of the remittitur *is jurisdictional,* unlike the law of the case doctrine. (*Snukal, supra,* 23 Cal.4th at p. 774, fn. 5, 98

Cal.Rptr.2d 1, 3 P.3d 286; *Rice, supra,* 25 Cal.2d at p. 263, 153 P.2d 313.) Therefore, whether the trial court believed our decision was right or wrong, or had been impaired by subsequent decisions, it was bound to follow the remittitur. (See also *People v. Lincoln* (2006) 144 Cal.App.4th 1016, 50 Cal.Rptr.3d 855; *In re Terrance B.* (2006) 144 Cal.App.4th 965, 50 Cal.Rptr.3d 815.)" (People v. Dutra (2006) 145 Cal.App.4th 1359, 1367.)

"" 'A reviewing court has authority to "affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had." (Code Civ. Proc., § 43.) The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned.' [Citations.] 'The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void.' " (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859, 148 Cal.Rptr.3d 709.) ¶ In addition to following the appellate court's remittitur, a trial court on remand must comply with the law of the case. " ' "The doctrine of 'law of the case' deals with the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." ' " (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127, 218 Cal.Rptr.3d 127, 394 P.3d 1055.)" (Rincon EV Realty LLC v. CP III Rincon Towers, Inc. (2019) 43 Cal.App.5th 988, 997.)

The jury's special verdicts awarding damages against defendant Pedersen clearly shows that jury entered a verdict after trial that defendant Pedersen was only jointly and severally liable for past medical expenses in the total amount of $4,005, lost wages of $500, no future economic loss, and $2,250 for past non-economic loss, including pain and mental suffering.

The appellate opinion did not reverse these special verdicts of the jury and return the case for retrial of the issue of the amount of damages defendant Pedersen is liable for related to the neck and upper back injuries. The jury expressly found that plaintiff's "damages attributable to defendant PEDERSEN" for past economic loss for medical expenses was limited to $4,005. Use the phrase "damages attributable to defendant PEDERSON" necessarily includes any and all damages attributable to him jointly and severally with defendant Vetter. The jury did not find that the amount of defendant Pedersen's joint and several liability for past medical expenses was $29,507.02, the court is not free to consider evidence not offered to the jury and was not admitted (Plaintiff's Exhibit 14-02), the remittitur and appellate decision did not allow the court to retry the amount of past medical expense damages awarded by the jury, and a trial court can not reweigh the evidence in order to rewrite the express special verdict findings of the jury and enter a judgment for damages not supported by the jury's special verdict entered after trial.

Inasmuch as the Third District has found joint and several liability for the plaintiff's neck and upper back injuries with defendant Pedersen only 25% responsible, it is appropriate to only hold defendant Pedersen responsible to pay 25% of the $2,250 in past non-economic damages the expressly jury found defendant Pedersen was responsible for. "Civil Code section 1431.2, subdivision (a) states: "In any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount." Thus, in an action subject to Proposition 51, each tortfeasor remains jointly and severally liable to the plaintiff for economic damages, but is liable to the plaintiff for only its proportionate share of noneconomic damages. (*DaFonte v. Up–Right, Inc.,*

supra, 2 Cal.4th at p. 600, 7 Cal.Rptr.2d 238, 828 P.2d 140.)" (Bostick v. Flex Equipment Co., Inc. (2007) 147 Cal.App.4th 80, 89–90.)

Defendant Pedersen's proposed judgment after appeal shall become the judgment of the court.

The question becomes whether interest should accrue from the date of entry of the initial judgment.

"Except as provided in subdivision (b), interest commences to accrue on a money judgment on the date of entry of the judgment." (Code of Civil Procedure, § 685.020(a).)

The California Supreme Court long ago stated the law related to accrual of interest after a judgment was appealed as follows: "The law on this subject was summarized in the *Stockton Theatres* case, supra, 55 Cal.2d 439, 442, 11 Cal.Rptr. 580, 582, 360 P.2d 76, 78, as follows: ¶ A judgment bears legal interest from the date of its entry in the trial court even though it is still subject to direct attack. *Bellflower City School Dist. of Los Angeles (County) v. Skaggs*, 52 Cal.2d 278, 280, 339 P.2d 848. When a judgment is modified upon appeal, whether up ward or downward, the new sum draws interest from the date of entry of the original order, not from the date of the new judgment. *Beeler v. American Trust Co.*, 28 Cal.2d 435, 438, 170 P.2d 439; *Barnhart v. Edwards*, 128 Cal. 572, 575, 61 P. 176; 1 A.L.R.2d 479, 510-512, 520-521. On the other hand, when a judgment is reversed on appeal the new award subsequently entered by the trial court can bear interest only from the date of entry of such new judgment.'" (Snapp v. State Farm Fire & Cas. Co. (1964) 60 Cal.2d 816, 818–819.)

"Under California law, then, any judgment that establishes one party owes the other payment is a money judgment for the purposes of section 685.020, even if the precise amount owed has yet to be determined. ¶ In this case, when judgment was entered in September 2017, it established plaintiffs' right to certain costs as the prevailing parties in the action. (See §

1033.5, subd. (a).) That judgment was therefore a money judgment for these costs because it required Apple to pay them, even if the exact amount remained to be determined. Interest on those amounts began to accrue immediately upon entry of the judgment." (Felczer v. Apple Inc. (2021) 63 Cal.App.5th 406, 415.)

Interest shall accrue commencing on the date of entry of the initial judgment on December 13, 2019.

TENTATIVE RULING # 10: DEFENDANT PEDERSEN'S PROPOSED JUDGMENT AFTER APPEAL SHALL BECOME THE JUDGMENT OF THE COURT. INTEREST SHALL ACCRUE COMMENCING ON THE DATE OF ENTRY OF THE INITIAL JUDGMENT ON DECEMBER 13, 2019. 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 10, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. LIGHT v. CAMERON PARK SENIOR LIVING, LLC 22CV0135

(1) Defendants Cameron Park Senior Living, LLC's, Sequoia Senior Living, LLC's, CPSL SPE, LLC's and Kasner's Demurrer to Complaint.

(2) Defendants Cameron Park Senior Living, LLC's, Sequoia Senior Living, LLC's, CPSL SPE, LLC's and Kasner's Motion to Strike Punitive Damages and Treble Damages Prayers and the Allegations in Support Thereof.

TENTATIVE RULING # 11: THESE MATTERS ARE CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 24, 2022, IN DEPARTMENT NINE.

12. THE POTOSKY FAMILY REVOCABLE LIVING TRUST v. THE BELFORD ESTATE HOMEOWNERS ASSOCIATION 21CV0356

Plaintiff's Motion for Leave to File 1st Amended Complaint.

Plaintiff moves for leave to amend the complaint to add the HOA President as a defendant and add a breach of fiduciary duty cause of action. A proposed amended complaint has been submitted.

The proof of service in the court's file declares that on May 16, 2022, notice of the hearing and copies of the moving papers were served by electronic service on defense counsel. There is no opposition to the motion in the court's file.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code of Civil Procedure, § 473(a)(1).)

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.

(Citations omitted.)" (Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530.) "…absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (Board of Trustees of Leland Stanford Jr. University v. Superior Court (2007) 149 Cal.App.4th 1154, 1163.)

It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. (Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1048.)

The defendant's failure to file an opposition is an admission that the motion is meritorious and, therefore, the court grants the motion. (See Local Rule 7.10.02C.)

TENTATIVE RULING # 12: PLAINTIFF'S MOTION FOR LEAVE TO FILE 1ST AMENDED COMPLAINT IS GRANTED. PLAINTIFF IS TO FILE AN ORIGINAL, EXECUTED 1ST AMENDED COMPLAINT. PLAINTIFF IS ALSO ORDERED TO SERVE THE NEWLY NAMED DEFENDANT WITH THE 1ST AMENDED COMPLAINT. THE DEFENDANTS WHO HAVE APPEARED IN THIS ACTION ARE DEEMED TO HAVE BEEN SERVED WITH THE 1ST AMENDED COMPLAINT. 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 10, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

13. WANLAND v. WANLAND 21CV0383

Defendants' Demurrer and Motion to Strike.

TENTATIVE RULING # 13: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JULY 1, 2022, IN DEPARTMENT NINE.