May 16, 2025
Dept. 9
Tentative Rulings

1.	**23CV0396**	**RICH v. GLADIOLUS HOLDINGS, LLC**
Preliminary Approval of Class Action Settlement		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions.

This is an unopposed motion for an Order for Preliminary Approval of a Class Action Settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. The Motion states the Settlement Agreement is attached as Exhibit 1 to Declaration of James Clark, April 2, 2025. However, the Court is unable to locate the Settlement Agreement as an attachment to any of the pleadings. The hearing will be continued to allow the Settlement Agreement to be properly filed for the Court's review.

TENTATIVE RULING #1:

HEARING CONTINUED TO FRIDAY, JUNE 27, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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

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

2.	**24CV2653**	**WEXELMAN v. FCA US, LLC**
Demurrer & Motion to Strike		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions.

This is a lemon law case involving Plaintiff Eric Wexelman's ("Plaintiff") purchase of a 2017 Ram 2500. Plaintiff alleges the Subject Vehicle has an "engine defect" that was covered by warranty and substantially impaired the Subject Vehicle's use, value, or safety, which was not repaired within a reasonable number of attempts. (Compl., ¶¶ 15-16, 18.) Plaintiff also alleges FCA US knew about the "engine defect" before the date of sale but intentionally failed to disclose that information to induce Plaintiff to enter a sales contract with a third-party dealership. (Compl., ¶¶ 64-68.)

Defendant FCA US, LLC ("Defendant" or "FCA") argues that Plaintiff's Sixth Cause of Action ("6CA") for Fraudulent Inducement-Concealment fails to set forth facts sufficient to constitute a cause of action. Code of Civil Procedure ("CCP") § 430.10(e) & (f). Defendant argues the 6CA fails because: FCA does not owe Plaintiff a duty of disclosure; the facts alleged do not meet the heightened pleading standard for a fraud cause of action; and, the claim is barred by the Economic Loss Doctrine.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**
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> Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Meet and Confer Requirement

CCP §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

CCP §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Pursuant to the Declaration of Michael S. Zar states that the parties attempted to meet and confer.

Argument

To succeed on a Fraudulent Inducement - Concealment cause of action, Plaintiff must establish that: (1) FCA concealed a material fact; (2) FCA was under a duty to disclose the fact to Plaintiff; (3) FCA intentionally concealed or suppressed the fact with the intent to defraud or harm; (4) Plaintiff was unaware of the fact and would not have acted as they did had they known the fact; and (5) as a result of the concealment, Plaintiff was harmed. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

Duty to Disclose

Defendant first addresses the second element by arguing it had no duty to disclose material facts to Plaintiff. Defendant states that there a transaction between the parties can give rise to a duty to disclose. "Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312.) A defendant cannot be held liable for intentional concealment where it indirectly sold a product through a third-party intermediary. (See Fulford v. Logitech, Inc. (N.D. Cal. 2009) 2009 WL 837639, at *1 [dismissing intentional concealment claim against product manufacturer because plaintiff did not "argue[] or allege[] that he entered into any transaction with {defendant}," and noting that plaintiff alleged that he purchased product from a third party].) Defendant asserts that if there is no fiduciary relationship between the parties, the next step is to determine whether Defendant had exclusive knowledge of material facts. If the Defendant had exclusive knowledge of material facts, Defendant argues the final step is that there was a direct transaction between Plaintiff and Defendant where the material facts could be disclosed.

Plaintiff opposes, arguing that in cases claiming fraud through non-disclosure, the standard is different. If the concealment is based on providing false or incomplete statements, the pleading must at least set forth the substance of the statements at issue. (Alfaro, supra.) Additionally, the particularity requirement of fraud is "relaxed when it is apparent from the allegations that the defendant necessarily possesses knowledge of the facts." (*Quelimane Co. v. Steward Title Guaranty Co.* (1998) 19 Cal.4th 26, 27; see also *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-217, [when it appears from the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons is that less particularity is required when the facts lie more in the knowledge of the opposite party].) The Court is more persuaded by Plaintiff's argument.

Defendant argues that the Complaint does not contain factual support for the allegation that FCA had exclusive knowledge, and that the Complaints fails to allege that there was a direct transaction between Plaintiff and FCA, that FCA financed the vehicle, that FCA had a direct interest in the sale of the vehicle, or that FCA controlled the transaction. Defendant argues that FCA's express warranty is not a contract, and therefore does not create a duty between FCA and Plaintiff. "[M]anufacturer vehicle warranties that accompany the sale of motor vehicles without regard to the terms of the sale contract between the purchaser and the dealer are independent of the sale contract." (*Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 306 Cal.Rptr.3d 611, 619-20.) "California law does not treat manufacturer warranties imposed outside the four corners of a retail sale contract as part of the sale contract." (*Id*. at p. 621; see also *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Cavanaugh* (1963) 217 Cal. App. 2d 492, 514 [explaining warranties from a manufacturer that is not a party to the sales contract are "not part of {the} contract of sale."].)

Plaintiff opposes. "A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship . . .; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.) "Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as . . . parties entering into any kind of contractual agreement." (*Id*.) Here, the Complaint alleges that Plaintiff entered into a warranty contract with FCA regarding the vehicle. (Complaint, ¶ 10.) Plaintiff argues that he and FCA are "parties entering into [a] contractual agreement." The Court agrees with Plaintiff's argument; however, an allegation of the parties entering into a warranty contract alone may not be sufficient to establish the duty to disclose. See *Corporation of*

Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Cavanaugh (1963) 217 Cal.App.2d 492.

Defendant next argues that dealership employees are not FCA agents. In *Martha Ochoa v. Ford Motor Co.* (2023) 89 Cal.App.5th 1324, another Song-Beverly case, Defendant states the court agreed that Ford's authorized dealerships are not agents of Ford for purposes of the sales contract or the sale of a vehicle to a plaintiff. However, in that case, the court discussed the insufficiency of plaintiff's allegations.

Plaintiff opposes. "Under California law, a vendor has a duty to disclose material facts not only to immediate purchasers, but also to subsequent purchasers when the vendor has reason to expect that the item will be resold." (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 851 [emphasis in original].) Truly it would be anomalous if a manufacturer were able to avoid any responsibility for its lack of disclosure by saying its dealership sold the car. Defendant FCA certainly expects its authorized dealerships to sell its vehicles to purchasers. (See *Khan v. Shiley Inc.* (1990) 217 Cal.App.3d 848, 850-851; see also *Barnhouse v. City of Pinole* (1982) 133 Cal.App.3d 171, 191-193 "an action for deceit does not require privity of contract.") While the Court tends to agree with Plaintiff's position, the allegations may not be sufficient based on the split in authority.

Heightened Pleading Standard

Defendant argues that Plaintiff's concealment allegations lack the requisite factual specificity required. "Fraud is never presumed." (*Mason v. Drug Inc.* (1939) 31 Cal.App.2d 697, 703.) Rather, fraud must be pled specifically; general and conclusory allegations do not suffice. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.) This particularity requirement necessitates facts which show how, when, where, to whom, and by what means the representations were tendered. (*Id*. at p. 73.)

Plaintiff does not address this argument.

Economic Loss Doctrine

Defendant's last argument is that the 6CA violates the Economic Loss Doctrine, which restricts recovery of tort damages to non-economic losses, precluding actions where a plaintiff seeks compensation for purely economic damages resulting from frustrated expectations in a commercial transaction. (*Seely v. White Motor Co.* (1965) 63 Cal.2d 9, 17-18 [superseded by statute on other grounds].) This principle is designed to uphold the distinction between contractual disappointments, which are remedied through contract law, and tortious conduct, which typically involves personal injury or property damage not inherently economic in nature. (*Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 482.) Defendant states that Plaintiff seeks purely economic damages in connection with her fraudulent concealment cause of action,

alleging these damages arose from entering a contract based on misrepresented or concealed facts.

Plaintiff opposes, arguing that California has repeatedly allowed tort damages where a contract was induced by fraud. "[F]raudulent inducement of contract—as the very phrase suggests—is not a context where the 'traditional separation of tort and contract law' [citations] obtains. To the contrary, this area of the law traditionally has involved both contract and tort." (*Lazar v. Sup. Ct.* (1996) 12 Cal.4th 631, 645.) As addressed above, the allegations in the Complaint do not seem to establish any potential contract between the parties aside from the warrant, which may not be sufficient.

While overall the Court is more persuaded by Plaintiff's arguments, without additional allegations, Plaintiff's arguments may fail. Defendant has not argued that leave to amend would be futile. Defendant concurrently filed a Motion to Strike punitive damages from Plaintiff's Complaint, arguing that if the demurrer to the 6CA is sustained, there are no grounds for punitive damages. However, the Motion is moot as the Court is sustaining the Demurrer with leave to amend.

TENTATIVE RULING #2:

1. **DEMURRER SUSTAINED WITH LEAVE TO AMEND, WITHIN 10 DAYS FROM THE DATE THE RULING IS ADOPTED.**

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3.	**PCL20160027**	**EL DORADO COUNTY v. MARCHI**
Potentially Dangerous Dog		

TENTATIVE RULING #3:

ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.

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4.	**24CV0887**	**ANDRIDGE v. NUNES et al**
Motion for Sanctions		

Defendant Michael Nunes ("Defendant") moves the court for sanctions against Plaintiff Scott Andridge ("Plaintiff") pursuant to California Code of Civil Procedure §§ 128.7 and 2030.030. Defendant's Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions. Defendant prays for monetary sanctions of $85,000 to $100,000 and striking of Plaintiff's pleadings.

Defendant argues that the pleadings contain innacuracies; however, he has no evidence to show that the requirements of Code of Civil Procedure § 128.7 have not been met. Sanctions pursuant to Code of Civil Procedure § 128.7 are denied.

In terms of sanctions under Code of Civil Procedure § 2023.030, this Motion is not proper. A Motion to Compel should have been brought to address the alleged discovery dispute. However, the deadline for filing a Motion to Compel has passed. Sanctions pursuant to Code of Civil Procedure § 2023.030 are denied. Lastly, Defendant did not sign the Motion.

TENTATIVE RULING #4:

MOTION DENIED.

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5.	**24CV0532**	**VILT v. POLSTON**
Set Aside Default		

Defendant Kurt Polston ("Defendant") brings this Motion to Set Aside the Default entered against him, under Code of Civil Procedure ("CCP") § 473(b) based on excusable neglect and procedural irregularity. Defendant argues that the Request for Entry of Default, Request for Entry of Judgment, and Notice of Entry of Judgment were served on Defendant at an address Plaintiff was residing it, and that Defendant had no access to due to a restraining order.

CCP § 473(b):

> (b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken…

Plaintiff opposes, arguing that Defendant was personally served with the Complaint and Summons, but that he failed to provide the Court with his new address. Plaintiff also argues that CCP §473(b) is limited to orders entered within six months and that the order in this case is outside that time frame. The Default was entered on September 24, 2024. Defendant's Motion was filed April 21, 2025. <u>The Court agrees that the Motion was not timely filed.</u>

In terms of the procedural irregularity, and Defendant's argument about invalid service, Plaintiff argues any insufficiencies are in fact the result of Defendant's failure to comply with his own procedural obligations under law. Under California law, parties involved in legal proceedings are required to promptly notify the court of any changes to their address. (CRC 2.251.) Parties have a duty to inform the court and other parties of any change in their address; failure to do so does not invalidate service made to the last known address. (see *Bethlahmy v. Customcraft Industries, Inc.* (1961) 192 Cal.App.2d 308, 310 ("the person to be served has the burden of notifying the court of any change of address, and failure so to do does not enable him to claim improper notice."); *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 545 ("A serving party is not required to exhaust all avenues of obtaining a current address."). <u>The Court agrees that Defendant failed to provide the Court and therefore the Plaintiff with a current address.</u>

While the Motion vaguely addresses mistake, inadvertence, surprise, or excusable neglect, the Court agrees with Plaintiff that Defendant fails to affirmatively show that the situation is clearly within one of the categories. The words mistake, inadvertence, surprise, or excusable neglect "are not meaningless, and the party requesting such relief 'must affirmatively show' that the situation is one which clearly falls within such category." (*Kendall v. Barker* (1988)

197 Cal.App.3d 619, 623 (emphasis added); citing *Estate of Wolper* (1956) 146 Cal.App.2d 249, 251.) A burden is imposed upon the party seeking relief to show why he is entitled to it, "and the assumption of this burden necessarily requires the production of evidence." (*Kendall*, 197 Cal.App.3d at 624 (emphasis added).)

Defendant replied, raising some arguments for the first time, which is barred by case law. See *Proctor v. Vishay Intertechnology, Inc.* (2013) 213 Cal. App. 4th 1258, 1273–74. His other responses do not change the Court's analysis.

Defendant does not address the untimeliness of his Motion in either the Motion itself or in the Reply. He further failed to comply with the requirements of CCP §473(b) in that no proposed Answer was filed with the Motion. While the law favors resolving cases on the merits, this Motion is brought under CCP § 473(b) which has strict requirements which were not met, and the statute states the Motion shall not be granted.

TENTATIVE RULING #5:

MOTION DENIED.

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6.	**24CV0481**	**MATTER OF SAUER**
Compliance with Subpoena		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions.

This matter arises from Mr. Sauer's March 12, 2024, Verified Petition ("Petition") for Order Permitting Pre-Commencement Discovery under Code of Civil Procedure § 2035.010 et seq. In January 2025, Mr. Sauer issued a deposition subpoena for business records (the "Subpoena") to Bank of America, National Association ("BANA") seeking a variety of records pertaining to funds received from the suspect Chase Bank account. (Kolkey Decl., ¶ 2.) The Subpoena was personally served on BANA's registered agent on January 6, 2025. (*Id*.) The production date appointed in the Subpoena was January 23, 2025. (*Id*.) The Subpoena had 15 categories of records requested. (*Id*.) The records requested were tied to previous records received from JPMorgan Chase Bank (*Id*., ¶ 3), which had revealed that approximately $250,000 of Mr. Sauer's funds went from the fraudster's Chase Bank account into Autobahn's BANA account. BANA did not object or otherwise formally respond to the Subpoena. (*Id*., ¶ 4.)

On January 23, 2025, counsel for third party objector Autobahn electronically served Mr. Sauer's counsel with a series of written objections ("Objections") to some requests within the Subpoena. (*Id*., ¶ 5.) The Objections pertained only to categories 8 through 15, inclusive, of business records in the Subpoena. (*Id*.) No party has raised any objections to categories 1 through 7 of records sought by the Subpoena.

BANA has not responded to the subpoena or to meet and confer efforts by Mr. Sauer's counsel. Discussions have occurred between counsel for Mr. Sauer and counsel for objector Autobahn.

The Code of Civil Procedure enables the Court to order discovery in response to a subpoena, including a subpoena seeking the production of business records, documents, or electronically stored information. (See Code Civ. Proc., §§ 1985.8, subds. (d)–(m); 2025.480, subds. (a)–(m).) Although section 2025.480 is located within a Chapter of the Code pertaining to oral depositions within California, courts have looked to this section for guidance on depositions seeking business records as well. (See, e.g., *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 131.) In addition, disobedience in response to a subpoena is punishable as contempt of court. (See Code Civ. Proc., § 1991.) Mr. Sauer issued a subpoena to BANA and BANA has not responded in any way. A full copy of the Subpoena and a proof of personal service on BANA's registered agent in California are attached, respectively, as Exhibits A and B to the Declaration of Christopher Kolkey filed herewith. (See Kolkey Decl., Exs. A, B.) The Court hereby orders BANA to produce within 21 days of the written Order, all records responsive to categories 1 through 7.

According to Code of Civil Procedure § 2025.480, a motion to compel compliance with a deposition subpoena must be filed within 60 days after the completion of the record. (See Code Civ. Proc., § 2025.480, subd. (b).) With particular regard to Categories 8 through 15 of records sought in the Subpoena, Mr. Sauer is cognizant of Autobahn's objections and wishes to further confer with Autobahn, requesting a continuance on this limited issue for approximately 90 days.

There is no objection filed by BANA or Autobahn.

TENTATIVE RULING #6:

1. **THE COURT HEREBY ORDERS BANA TO PRODUCE WITHIN 21 DAYS OF THE WRITTEN ORDER, ALL RECORDS RESPONSIVE TO CATEGORIES 1 THROUGH 7.**
2. **A HEARING ON RESPONSES TO CATEGORIES 8 THROUGH 15 IS HEREBY CONTINUED TO FRIDAY, AUGUST 15, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

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

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

7.	**24CV0177**	**TWO JINN, INC v. SHAW**
Motion to Enforce Settlement		

This is a basic action for money damages from an account stated in writing. The complaint has a single cause of action for breach of contract. Defendant MICHAEL SHAW ("Defendant") became indebted to Plaintiff TWO JINN, INC. DBA ALADDIN BAIL BONDS (“Plaintiff”) for the principal amount of $4,015.00 for a bail bond premium. Plaintiff's complaint sought $4,015.00, plus interest, attorney fees and costs. On or about March 8, 2024, the parties entered into a Stipulation for Entry of Judgment (“Settlement Agreement”) where Defendant agreed to a payment schedule. Defendant made the first five payments and then failed to make payment starting on July 16, 2024. Plaintiff notified Defendant of the breach on the Settlement Agreement on September 6, 2024, and gave Defendant ten days to cure the default. The Defendant did not cure the default. To date, Plaintiff has only received five payments from Defendant, totaling $1,525.00. The Settlement Agreement states that the prevailing party on any action to enforce its terms shall be awarded its fees and costs. Plaintiff has incurred $60.00 in pursuing this motion necessitated solely as a result of Defendant's failure to follow through on the Settlement Agreement.

Under California Code of Civil Procedure § 664.6, a trial court may now enter judgment pursuant to a settlement if the settlement is made in writing and signed by the parties outside the presence of the court or on the record before the court. The court may retain jurisdiction over the parties to enforce the settlement until performance of the settlement terms have been completed.

Plaintiff requests that judgment be entered against Defendant for the principal of $3,355.00 plus $60.00 in costs for a total of $3,415.00. Plaintiff is not seeking interest or attorney’s fees as part of this Motion.

TENTATIVE RULING #7:

ABSENT OBJECTION, MOTION GRANTED.

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

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

8.	**25CV0606**	**KELLER v. STRICKLAND et al**
Motion for Preliminary Injunction		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions.

Plaintiff JULIE RENEE KELLER ("Plaintiff") hereby requests that this Court grant a preliminary injunction enjoining Defendant MATTHEW STRICKLAND ("Defendant") from obstructing Plaintiff's access into her residential property. Plaintiff states there are only two access points into her property, Defendant has already erected an obstruction over one of the access points, and intends to erect another obstruction over the other access point, completely preventing access to Plaintiff's property.

Plaintiff is the current owner of the real property situated in the County of El Dorado, state of California, commonly known and numbered as 4680 Live Oak Road, Diamond Springs, CA 95619-9216, bearing APN: 098-060-020-000 (hereinafter "Plaintiff's Property"). (Verified Complaint, attached as Exhibit 1 to the Declaration of Julie Renee Keller ["Ex. 1"], ¶ 1.) Defendants MATTHEW STRICKLAND and LINDA MANN are the current owners of the neighboring real property situated in the County of El Dorado, State of California, commonly known and numbered as 4650 Live Oak Road, Diamond Springs, CA 95619-9216, bearing APN: 098-060-031-000 (hereinafter "Defendants' Property"). (Ex. 1, ¶ 3.)

Plaintiff states that her Property is landlocked. The nearest public roadway to Plaintiff's Property is Live Oak Road. Beginning at Live Oak Road is a paved driveway that passes through the Defendants' Property, continues up to the residential structure within the Plaintiff's Property, then bends southeast and continues into the 4681 Live Oak Property, where it intersects perpendicularly with the gravel road that runs to and from the same public street. (Ex. 1, ¶ 10.) So, there are two avenues of ingress/egress to reach the Plaintiff's Property from a public roadway: (i) a paved driveway that proceeds in a southwestern / northeastern direction through the Defendants' Property, and (ii) a narrow gravel road that proceeds in a southwestern / northeastern direction through the 4681 Live Oak Property, that intersects with the paved driveway that continues northwest to the Plaintiff's Property and southeast further into the 4681 Live Oak Property. (Ex. 1, ¶ 11.)

On information and belief, from June 2011 to February 2021, the prior owner of Plaintiff's Property regularly used the paved driveway that passes through the Defendants' Property for access to the Plaintiff's Property. (Ex. 1, ¶ 16.) Plaintiff has continued to regularly use the same paved driveway to access the Plaintiff's Property from February 2021 to February 2025. (Ex. 1, ¶ 15.) This paved driveway is also used by Plaintiff's invitees, including deliverymen, to access Plaintiff's Property, and is the only viable access point for emergency services vehicles to reach the Plaintiff's Property. (Ex. 1, ¶¶ 17-18.) In or around February 2025, however,

Defendants built a barrier over the paved driveway within the Defendants' Property, completely obstructing access to the Plaintiff's Property through the Defendant's Property. (Ex. 1, ¶ 19.) Moreover, Defendants have since informed Plaintiff of their intent to fence off the paved driveway near the gravel road that runs northeast / southwest through the 4681 Live Oak Property. (Ex. 1, ¶ 22.) Were the Defendants to proceed with this plan, there would be no way to access Plaintiff's Property. (Ex. 1, ¶ 23.)

As for the existing barrier, on information and belief, the El Dorado Fire Department has directed the Defendants to remove the barrier, as it restricts the ability of emergency services vehicles to access Plaintiff's Property. (Decl. of Keller, ¶ 10.) In response, Defendants have seemingly complied temporarily, only to erect a different barrier on various dates. (Decl. of Keller, ¶¶ 9, 11-13.) There is still a barrier in place as of the date of this motion. (Decl. of Keller, ¶ 13.) So, preliminary relief is necessary to prevent a multiplicity of actions for each time the Defendants remove and erect a different barrier. Moreover, since Defendants have indicated that they plan to obstruct the remaining access point, preliminary injunctive relief is necessary to prevent a complete loss of access to Plaintiff's Property.

"[A]s a general matter, the question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) Plaintiff argues she is likely to succeed on the merits of both of her causes of action that pray for preliminary and permanent injunctive relief, (i) Enforcement of Easement Pursuant to Civil Code § 809, and (ii) Private Nuisance.

§ 809 Claim

Civil Code § 809 states: "[t]he owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto." Under California law, a prescriptive easement is established by proving that a use of another's land was: (1) continuous and uninterrupted (for five years); (2) open and notorious; and (3) hostile and adverse. (*Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449.) Plaintiff argues that she can establish the elements for a prescriptive easement because use of the driveway by her predecessor and her was continuous and uninterrupted, for a period of 13 years, was open and notorious since the driveway is visible from Defendants' Property, and hostile and adverse because Plaintiff and her predecessors did not have permission to use Defendants' Property. The Court agrees that Plaintiff can establish the factors for prescriptive easement.

Plaintiff further argues that she could also establish an easement by necessity. Under California law, an easement by necessity is established by proving "(1) a strict necessity for the right-of-way, and (2) common ownership of the servient and dominant tenements at the time of

the conveyance giving rise to the necessity." (*Kellogg v. Garcia* (2002) 102 Cal.App.4th 796, 804.) Plaintiff argues the first element is met because her property is landlocked. This is because "[t]here are two avenues of ingress/egress to reach the Plaintiff's Property from a public road: (i) a paved driveway that proceeds in a southwestern / northeastern direction through the Defendants' Property, and (ii) a narrow gravel road that proceeds in a southwestern / northeastern direction through the 4681 Live Oak Rd Property, that intersects with the paved driveway that continues northwest to the Plaintiff's Property / southeast further into the 4681 Live Oak Rd Property." (Ex. 1, ¶ 44.) For the second element of common ownership, Plaintiff believes that Defendants' Property, Plaintiff's Property and 4681 Live Oak Road all shared a common owner. The Court agrees that Plaintiff can likely establish an easement by necessity.

Plaintiff last argues that she could establish an equitable easement. Under California law, "[t]o create an equitable easement, 'three factors must be present. First, the defendant must be innocent. … Second, unless the rights of the public would be harmed, the court should grant the injunction if the plaintiff 'will suffer irreparable injury ... regardless of the injury to defendant.' Third, the hardship to the defendant from granting the injunction 'must be greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant....' ." (*Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1009.)

Plaintiff argues innocence can be established based on her and her predecessor's use of the driveway over a period of 13 years. Plaintiff states that recognizing the easement does not do harm to the public, but would cause her irreparable injury because her property is landlocked. In terms of balancing the hardships, Plaintiff argues due to the obstruction on the northeastern paved driveway, Plaintiff is "(i) unable to have delivery services access her home, (ii) unable to have emergency services access her home, and (iii) unable to access her home without traveling onto the residential driveway within the 4681 Live Oak Rd Property to conduct a U-turn." (Ex. 1, ¶ 38(a).) Moreover, if the Court permits an obstruction to be erected over the southeastern paved driveway, "Plaintiff will be completely unable to access her home." (Ex. 1, ¶ 38(b).) Plaintiff asserts that the hardships that Defendants face as a result of Plaintiff's use is minor to none as "the residential structure on the Defendants' Property is set back from the paved driveway, and on a hill above the paved driveway, so that there is no interference with any privacy or safety of the tenant(s)." (Ex. 1, ¶ 38(c).) Moreover, "Plaintiff and her predecessor's use of the paved driveway was done without complaint by the owner of the Defendants' Property and their tenants for over thirteen years." (Ex. 1, ¶ 38(d).) The Court is unsure whether Plaintiff could establish an equitable easement because of the innocence. However, the Court still finds that Plaintiff is likely to succeed on her Enforcement of Easement pursuant to Civil Code § 809 claim.

Private Nuisance

"A nuisance is an interference with the interest in the private use and enjoyment of the land and does not require interference with the possession. … [I]n order for a defendant's conduct to constitute a nuisance, the interference with use and enjoyment of land must be both substantial and unreasonable. (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1178 [internal citations omitted].) Plaintiff argues that she is forced to suffer a complete interruption of delivery services and emergency services, and must travel into neighboring private driveways in order to enter or exit her parcel. (Ex. 1, ¶ 38(a).) Moreover, if the Defendants erect an obstruction over the other access point, Plaintiff argues she is forced to suffer a complete obstruction to all access to Plaintiff's Property. (Ex. 1, ¶ 38(b).) The Court agrees that Plaintiff is likely to succeed on her Private Nuisance claim.

Balance of Harm

"The second requirement for the grant of a preliminary injunction is the balancing of the equities. In the last analysis the trial court must determine which party is the more likely to be injured by the exercise of its discretion and it must then be exercised in favor of that party. (*Bennett v. Lew* (1984) 151 Cal.App.3d 1177, 1184–1185; see *Dolske v. Gormley* (1962) 58 Cal.2d 513, 521–522 ["Involved herein is the 'relative hardship doctrine', wherein a court in determining whether a mandatory injunction should issue ordering removal of encroachments, must consider various factors including the good faith of the party who constructed the encroachments, and the proportionate hardships to the parties. Also relevant is a plaintiff's delay in seeking the mandatory injunction, and whether such a plaintiff will suffer irreparable injury from the encroachments.' "].) The Court agrees with the arguments presented that Plaintiff is likely to be harmed by a denial of the injunction.

Defendants did not file any Opposition.

TENTATIVE RULING #8:

ABSENT OBJECTION, MOTION GRANTED.

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9.	**24CV0034**	**TAPIA v. TAPIA**
Demurrer		

The Notice does not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions.

This case involves a partition action for the sale of real property in El Dorado County. Plaintiff filed her Verified First Amended Complaint ("FAC") on March 6, 2024. The FAC contains three causes of action: (1) Partition; (2) Declaratory Relief; and (3) Accounting. On October 31, 2024, the Court sustained Defendant's Demurrer to the Second and Third Causes of Action, without leave to amend. Therefore, the only remaining Cause of Action is for Partition.

On November 21, 2024, Defendant Sandra Villasenor filed a Verified Answer to the Plaintiff Sonia Tapia's Amended Complaint. On December 9, 2024, Plaintiff filed a Demurrer to Defendant's Verified Answer, arguing that the Answer fails to allege facts sufficient to state causes of action against Defendants. However, after the filing of the Demurrer, the parties entered into a Joint Stipulation to Interlocutory Judgment and Notice of Entry of Judgment ("Stipulated Judgment"), which became Order of the Court on February 28, 2025. Later, the parties entered into another Joint Stipulation to Determine Fair Market Value and Cotenant Buyout, which became Order of the Court on April 23, 2025.

Defendant opposes the Demurrer, arguing that it is moot because of the Stipulated Judgment. A claim or issue becomes "moot" where "an actual controversy did exist but, by the passage of time or a change in circumstances, ceased to exist." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) The role of the judiciary is to "decide actual controversies… and not to give opinion upon moot questions." (*Id.; Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859 863.) Pursuant to the Stipulated Judgment, Defendant Villasenor was permitted to exercise her buyout rights under the Partition of Real Property Act, the appraiser valued the Property, and the parties stipulated to the Property's fair market value and the timeline for Villasenor to notice her intent to buyout Plaintiff's interest. The Court agrees that the Demurrer is moot.

On May 13, 2025, Plaintiff filed a Notice of Withdrawal.

TENTATIVE RULING #9:

HEARING DROPPED FROM CALENDAR.

11.	**24CV1156**	**STRICKLAND v. KELLER**
Demurrer		

The Notice does not comply with Local Rule 7.10.05.

This case involves work performed by Plaintiff on Defendant's property. The issue already proceeded to trial in small claims court, where the Ruling was in favor of Defendant and indicated that Plaintiff - being unlicensed by the Contractor's State License Board (CSLB) - was not entitled to compensation for the work performed. (See Cal. Bus. & Prof. Code, §7031; RFJN, Exh. A.) On October 31, 2024, Plaintiff filed a Motion for Reconsideration, which was denied.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**
>
> Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and

confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

The Court is satisfied with the meet and confer efforts as outlined in the Declaration of Kevin James.

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

Defendant requests judicial notice of various documents in the Court's file in a small claims case involving the same parties.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

Defendant's request for judicial notice is granted.

***

The First Amended Complaint ("FAC") includes 2 causes of action: (1) Foreclosure of Mechanic's Lien Against Defendants; and (2) Breach of Contract.

Defendant demurs to the entire FAC on the grounds that the FAC fails to state a cause of action pursuant to Code of Civil Procedure § 430.10(e) because a prior ruling from a small claims matter bars Plaintiff's claims. Specifically, Defendant argues that the small claims ruling found Plaintiff did not have the requisite contractor's license and therefore was not entitled to compensation pursuant to Cal. Business and Professions Code § 7031. Defendant argues that the prior ruling triggers the doctrine of res judicata and prevents Plaintiff from pursuing the present cause of action which similarly requires proof of a valid contractor's license.

If the defense of res judicata appears from the face of the complaint, or from matters of which the Court must or may take judicial notice (see Evid. Code, §451, 452; Code of Civ. Proc., §430.30(a)), the complaint is subject to a general demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action in that it appears the action is res judicata, unless facts are alleged that would justify setting the prior judgment aside. (*Bennett v.*

Hibernia Bank (1956) 47 Cal.2d 540,554; *Henry v. Clifford* (1995) 32 Cal.App.4th 315,320; *Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299-1300.

A trial court may take judicial notice of a prior judgment in deciding whether to sustain a demurrer based on res judicata, regardless of whether the prior judgment was pleaded, provided that the court has been correctly apprised of the judgment and the party responding to the demurrer is given adequate notice and an opportunity to be heard as to the effect of the judgment. (*Pease v. Pease* (1988) 18 201 Cal.App.3d 29, 32.)

The FAC involves the same parties and the same facts so as to justify application of the doctrine of collateral estoppel. (*Dyson v. State Personnel Bd.* (1989) 213 Cal.App.3d 711, 723.) Res judicata does not merely bar re-litigation of identical claims or causes of action. Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from disputing issues decided against him/her, even when those issues bear on different claims raised in a later case. (*Vandenberg v. Sup. Ct.* (1992) 21 Cal.4th 815, 828.)

The FAC asserts the same operative facts (Plaintiff's construction on the ADU at Defendant's property) and seeks the same relief (breach of contract damages) as set forth in the Small Claims Matter. The facts and the relief sought were fully adjudicated at trial in the Small Claims Matter and a final, non-appealable Ruling has been issued. (See RF JN, Exhs. A & B.)

Although Defendant recognizes that Plaintiff did not assert "Foreclosure of Mechanic's Lien" in the Small Claims Matter, the basis of Plaintiff's first cause of action for foreclosure is dependent upon compensable damage and a valid contractor's license. California Civil Code sections 8400 et seq. set forth strict requirements under which eligible persons may record and enforce a pre-judgment mechanics lien. One of those requirements is that the person recording the mechanic's lien hold a valid contractor's license. (*Holm v. Bramwell* (1937) 20 Cal.App.2d 332, 334 [finding that where a person was unlicensed "[a] mechanic's lien may not be founded on an illegal contract procured contrary to law"]; See Bus. & Prof. Code, §7031(a); see also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* 36 Cal.4th 412,423 ["Section 7031(a) expressly provides that, 'regardless of the merits,' one may not 'bring or maintain any action, or recover in law or equity in any action, ... for the collection of compensation for the performance of any act or contract where a license is required ... without alleging that he or she was a duly licensed contractor at all time during the performance of that act of contract."'].) The Court in the small claims matter already determined that Plaintiff does not have a contractor's license; therefore, even with leave to amend, Plaintiff cannot establish this cause of action.

Plaintiff's Second Cause of Action states a claim for Breach of Contract. The alleged contract and breach relate to Plaintiff's work done on Defendant's ADU. Again, Defendant argues that the Ruling from the Small Claims Matter fully and finally adjudicated this same issue and found Plaintiff was not entitled to compensation for the work provided at Defendant's property because of his lack of proper licensure. (See RFJN, Exhs. A & B.) Defendant further

argues that the Ruling acts as total bar to further litigation on this matter, which includes Plaintiff's Second Cause of Action for breach of contract. Defendant argues that Plaintiff cannot amend his FAC in this matter to resolve this issue as he is not entitled to the compensation for the work provided. (*MW Erectors, supra*, 36 Cal.4th at 423. ["Because of the strength and clarity of this policy" [citations], the bar of section 7031(a) applies '[r]egardless of the equities.' Indeed, it has long been settled that 'the courts may not resort to equitable considerations in defiance of section 7031. "']) The Court agrees.

In his "Response to Julie Keller's Notice of Demurrer and Julie Keller's Request for Judicial Notice in support of Defendant Keller's Demurrer", the Court does not find any real opposition to the Demurrer itself. Rather, Plaintiff seems to dispute the Court granting judicial notice, without providing any legal argument for why the request should not be granted.

TENTATIVE RULING #11:

1. **DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **THE DEMURRER IS GRANTED IN FULL WITHOUT LEAVE TO AMEND.**

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