May 23, 2025
Dept. 9
Tentative Rulings

1.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS**
Motion to Dismiss & CMC to Reset Trial Dates		

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, MAY 23, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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.	**24CV0350**	**RAWLIN v. AUCTION SERVICES OF CALIFORNIA**
Motion to Stay Proceedings & Refer to Arbitration		

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

Defendant Auction Services of California, LLC moves the Court to stay the proceedings and refer this case to arbitration, pursuant to California Code of Civil Procedure ("CCP") §§ 1281.2 and 1281.4. Defendant argues that the parties entered into a valid arbitration agreement which requires that any disputes arising out of the contract be submitted to binding arbitration rather than be tried before a jury.

In the Conditional Sale Contract and Security Agreement ("Agreement") (CA-103-ARB, dated 3/31/2023), signed by Plaintiff and Defendant on September 28, 2023, page 8 or 10 includes an Arbitration Provision.

CCP § 1281.2:

> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> (a) The right to compel arbitration has been waived by the petitioner; or
>
> (b) Grounds exist for rescission of the agreement.
>
> (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.
>
> (d) The petitioner is a state or federally chartered depository institution that, on or after January 1, 2018, is seeking to apply a written agreement to arbitrate, contained in a contract consented to by a respondent consumer, to a purported contractual relationship with that respondent consumer that was created by the petitioner fraudulently without the respondent consumer's consent and by unlawfully using the

respondent consumer's personal identifying information, as defined in Section 1798.92 of the Civil Code.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate that controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c), the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

CCP § 1281.4:

If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.

Defendant argues that the parties voluntarily and in good faith signed the Agreement, which contains an Arbitration Provision, and therefore the Court should order arbitration and stay the proceedings. Defendant further argues that based on the Agreement, each party is responsible for its own attorney's fees unless the Court determines otherwise.

Plaintiff opposes, arguing that Defendant has waived arbitration based on the amount of time that has passed. The case was filed on February 21, 2024. Defendant filed an answer on June 12, 2024, which was stricken on February 7, 2025 since it was an unrepresented LLC, and given time to find an attorney. Defendant found an attorney who substituted in on April 4, 2025 and filed the present Motion on April 17, 2025.

Plaintiff states that a party who does not demand arbitration within a reasonable time is deemed to have waived the right to arbitration. (*Spear v. California State Automobile Ass'n* (1992) 2 Cal.4th 1035, 1043.) Among the facts a court may consider is any prejudice the opposing party suffered because of the delay. (*Id*.) Plaintiff argues the prejudice suffered is that she had to file a motion to strike and that trial is looming. Plaintiff does not persuade the Court that the present Motion was not filed within a reasonable time. After the Answer was stricken, Defendant found counsel within two months who quickly filed the present Motion.

Plaintiff further argues that Defendant did not prove the existence of an arbitration agreement. The moving party must prove by a preponderance of evidence the existence of an arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397.) Disregarding the declaration that Plaintiff objects to, the Agreement makes it clear that both parties signed and submitted themselves to an Arbitration Provision.

California law strongly favors arbitration as a means of dispute resolution. The California Arbitration Act (CAA) expresses a strong public policy in favor of arbitration, viewing it as a speedy and relatively inexpensive method for resolving disputes (*Ramirez v. Charter Communications, Inc.*, (2024) 16 Cal.5th 478), (*Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59). This policy is reflected in various provisions of the California Code of Civil Procedure, which govern arbitration proceedings and enforcement of arbitration agreements (West's Ann.Cal.C.C.P. § 1281.2).

Based on the law's strong preference for resolving matters through arbitration, the presence of the Agreement, and the Court's finding that the Motion was brought within a reasonable time, the Motion is granted.

TENTATIVE RULING #2:

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).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3.	**25CV0806**	**BRADLEY A. CHRISTIAN REVOCABLE TRUST v. COUNTY OF EL DORADO**
Notice of Appeal of Administrative Order		

4.	**25CV0807**	**BRADLEY A. CHRISTIAN REVOCABLE TRUST v. COUNTY OF EL DORADO**
Notice of Appeal of Administrative Order		

5.	**25CV0808**	**BRADLEY A. CHRISTIAN REVOCABLE TRUST v. COUNTY OF EL DORADO**
Notice of Appeal of Administrative Order		

6.	**25CV0809**	**BRADLEY A. CHRISTIAN REVOCABLE TRUST v. COUNTY OF EL DORADO**
Notice of Appeal of Administrative Order		

7.	**25CV0810**	**BRADLEY A. CHRISTIAN REVOCABLE TRUST v. COUNTY OF EL DORADO**
Notice of Appeal of Administrative Order		

Government Code § 53069.4(b)(1):

> Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

TENTATIVE RULING #3, #4, #5, #6, #7:

APPEARANCES REQUIRED ON FRIDAY, MAY 23, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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.	**25CV1184**	**LITZA v. COUNTY OF EL DORADO et al**
Notice of Appeal of Administrative Order		

Government Code § 53069.4(b)(1):

Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

TENTATIVE RULING #8:

APPEARANCES REQUIRED ON FRIDAY, MAY 23, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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9.	**25CV0172**	**AUSTIN et al v. HANSEN et al**
Motion to Dismiss		

Defendants again file a Motion to Dismiss, which substantially mimics the Motion to Dismiss filed by Defendants on March 17, 2025. At the April 18, 2025 hearing, the court denied the motion, both for failure to properly serve the motion and due to the motion being nonsensical. The Notice for this renewed motion still does not comply with Local Rule 7.10.05, and the Court reserves the right to impose sanctions based on repeated violations. Defendants did however, properly serve the Plaintiffs.

Plaintiffs filed an Opposition, but there is no indication as to whether it was served on the Defendants. Either way, the court finds that the new motion fails to cure the issues regarding the substance of the initial motion.

As to the claim under CCP § 430.10(e), the court finds that the complaint sufficiently states a claim and, even if it did not, what the court deems as a demurrer by Defendants is untimely and overruled on that basis. As to the challenge to standing, this appears to be an attempt to demurrer based on Plaintiffs' alleged lack of legal capacity to sue in this action. Again, a demurrer is untimely given the response timeframe has elapsed. The same is the case for the alleged failure to join indispensable parties, which arguably could have been addressed by demurrer, but the deadline for such a claim has passed. As to the claims under CCP §§ 128.7 and 391, even overlooking any procedural issues with the motion, the court finds that Defendants have failed to make a sufficient showing that the lawsuit is frivolous or that the Plaintiffs should be deemed vexatious litigants. As to the claim that Plaintiffs have unclean hands, such a defense may be raised at trial, but the court finds no authority for a dismissal at this stage in the proceeding. Similarly, the court finds no authority for a dismissal for failing to mediate in good faith per the Cal. Rules of Court. Finally, even if the case is in the improper court division, which the court does not concede, the court finds that the appropriate remedy would be to transfer the case to the appropriate division, not dismiss the case outright. This is particularly the case since the same judge would hear the matter regardless of its classification as limited or unlimited.

For all of these reasons, the court finds that Defendants' motion lacks merit, and the court denies the motion in its entirety with prejudice.

TENTATIVE RULING #9:

MOTION IS DENIED WITH PREJUDICE.

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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10.	**24CV0499**	**HARMONY COMMUNITIES et al v. MORALES**
Demurrer & Motion to Strike		

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").

Pursuant to the Declaration of Inna Nytochka filed January 14, 2025 requesting an automatic extension, a demurrer was due on Tuesday, January 14, 2025. Attorney Nytochkta states she contacted Cross-Complainant's counsel by e-mail on Thursday, January 9, 2025 and followed up on January 13, 2025.

Pursuant to the Declaration of Attorney Nytochka dated February 13, 2025, she then sent a substantive e-mail to Cross-Complainant's counsel on the afternoon of Wednesday, February 12, 2025, when the demurrer was due on Friday, February 14, 2025. Counsel makes no indication whether she attempted to contact Cross-Complainant's counsel anytime between January 13, 2025 to February 12, 2025. Furthermore, the Code requires the parties to meet in person or by telephone. Attorney Nytochka made no attempts to meet in person or by telephone, and she waited until a mere two days before the filing was due. <u>While Cross-Complainant's should have been more responsive, Attorney Nytochka did not satisfy her duty to meet and confer in good faith in person or by telephone prior to filing the Demurrer.</u>

The Court hereby orders that the parties engage in good faith meet and confer efforts before judicial resources are expended on addressing the Demurrer. The hearing on the Demurrer and Motion to Strike are continued to the Court's earliest availability, which is Friday, July 18, 2025, at 8:31 AM in Department Nine. Two weeks prior to the hearing, the parties are to file a status report with the Court regarding the meet and confer efforts and whether any resolution has been reached.

TENTATIVE RULING #10:

1. **DUE TO INSUFFICIENT MEET AND CONFER EFFORTS, THE HEARING ON THE DEMURRER AND MOTION TO STRIKE IS CONTINUED TO FRIDAY, JULY 18, 2025, AT 8:31 AM IN DEPARTMENT NINE.**
2. **TWO WEEKS PRIOR TO THE HEARING, THE PARTIES ARE TO FILE A STATUS REPORT REGARDING THE MEET AND CONFER EFFORTS AND WHETHER ANY RESOLUTION HAS BEEN REACHED.**

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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11.	**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. At the May 16, 2025 hearing, Defendant appeared and was prepared to challenge the court's ruling. However, no request for oral argument had been made, and presumably for that reason Plaintiff did not appear. Given the deficiency in the Notice, the court continued the matter one week to allow Defendant to review the tentative ruling, which is reposted below without change, so that he could request oral argument if so desired. If oral argument is not requested, the court will adopt the tentative ruling per its local rules.

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 #11:

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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12.	24CV1156	STRICKLAND v. KELLER
Demurrer		

The Notice does not comply with Local Rule 7.10.05. At the May 16, 2025 hearing, Plaintiff appeared and was prepared to challenge the court's ruling. However, no request for oral argument had been made, and presumably for that reason Defendant did not appear. Given the deficiency in the Notice, the court continued the matter one week to allow Plaintiff to review the tentative ruling, which is reposted below without change, so that he could request oral argument if so desired. If oral argument is not requested, the court will adopt the tentative ruling per its local rules.

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 #12:

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

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13.	**24CV0577**	**WELLS FARGO BANK v. SUMNER**
Motion for Summary Judgment		

This case involves collection of monies owed pursuant to the terms of a written credit card agreement. Plaintiff's Complaint contains six causes of action, for (1) breach of written contract, (2) breach of contract (implied in fact), (3) money lent, (4) money paid, (5) open book account, and (6) account stated. Defendant filed an Answer. Plaintiff served written discovery consisting of Request for Admissions, which Defendant responded to. In his responses, Defendant admitted he was issued the credit card in question and that he was the only person who authorized charges to be made on the account.

Plaintiff argues there is no issue material fact – Defendant was issued the subject credit card by Plaintiff, Defendant was the only person who authorized charges to be made on the account, Defendant received monthly statements for the subject account, and there is no record of any unresolved disputes on the account. (UF 1-10) Plaintiff states the evidence shows that Defendant last made a payment on April 2, 2023 and owes Plaintiff $9,058.37. (UF 11-13)

Code Civ. Proc. § 437c(p)(1) sets forth plaintiff's burden in moving for summary judgment:

> A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

To establish a cause of action for breach of contract, the plaintiff must show: (1) The execution of a valid contract; (2) Plaintiff's performance or excuse for nonperformance; (3) Defendant's breach; and (4) resulting damage to plaintiff. See *Reichert v. General Insurance Co.* (1968) 69 Cal.Rptr. 321, 325. The Court finds that Plaintiff has established these elements.

To state a common count for money lent, the plaintiff need only allege that the defendant is indebted in a certain sum for money loaned by the plaintiff and that the defendant has not repaid the money. See *Pleasant v. Samuels* (1896) 114 Cal. 34, 36-38. The Court finds that Plaintiff has established this cause of action.

The common count for money lent or paid alleges the indebtedness "for money lent by plaintiff to defendant," or "money paid" or "expended" to or for the defendant. See *Pleasant*, *supra*, 114 Cal. at 34. The Court finds that Plaintiff has established this cause of action.

To establish a claim for open book account, Plaintiff must prove (1) that Plaintiff and Defendant had a financial transaction; (2) that Plaintiff kept an account of the debits and credits involved in the transaction; (3) that Defendant owes Plaintiff money on the account; and (4) the amount of money that Defendant owes Plaintiff. CACI 372; see also *Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708. The Court finds that Plaintiff has established this cause of action.

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due." *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600. The Court finds that Plaintiff has established this cause of action.

Since the Court finds that Plaintiff has established all causes of action, the burden shifts to Defendant to show one or more triable issues of material fact, or a defense. There is no Opposition filed by Defendant. Therefore, Plaintiff's Motion for Summary Judgment is granted.

TENTATIVE RULING #13:

MOTION GRANTED.

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14.	24CV1933	DRIGGS v. KINDERCARE LEARNING COMPANIES
Minor's Compromise		

This is a Petition to compromise a minor's claim. The Petition states the minor sustained injury to his right ring finger resulting from an accident at day care in January, 2024. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $30,000.00.

The Petition states the minor incurred $5,762.00 in medical expenses that have been negotiated or otherwise reduced to $384.16, which would be deducted from the settlement. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $7,500.00, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).) The Petition does include a Declaration by the attorney as required by California Rules of Court, Rule 7.955(c).

The minor's attorney also requests reimbursement for costs in the amount of $820.26. There are no copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the $21,295.58 due to the minor, the Petition requests that they be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The minor's presence at the hearing is generally required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D. However, based on the age of the minor, the Court hereby waives his appearance.

TENTATIVE RULING #14:

PENDING RECEIPT OF INVOICES FOR COSTS REQUESTED, THE PETITION IS GRANTED.

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