TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 12, 2023 3:00 p.m.
Courtroom 17 –Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
Meeting ID: 895 5887 8508
Passcode: 062178
https://us02web.zoom.us/j/89558878508?pwd=L2MySDFXWEtMa1JsdGUxUDFDOVNyZz09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 900 6833 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. SCV-267967, The Pinza Group v. McDowell

Motion for Summary Judgment and/or Summary Adjudication DENIED in full.

Facts

In its second amended complaint ("SAC"), Plaintiff complains that Defendant 434 Central Avenue Apartments LP ("434") breached its agreement ("Agreement") with Plaintiff to

use Plaintiff's services for listing and selling real property which 434 owned at 434 Central Ave, Alameda, CA ("the Property") by instead selling the Property through a deal directly with Defendant Colliers Parrish International Inc. ("Colliers"). It alleges that 434 had a duty under the Agreement to sell the Property through Plaintiff, 434 unilaterally breached the Agreement on December 7, 2020, and 434 is obligated to pay Plaintiff the $329,900 commission which Plaintiff would have earned on the agreed listing price of $16,495,000. Plaintiff alleges that Colliers and its licensed agent, Defendant Gavin McDowell ("McDowell") intentionally interfered with the Agreement by presenting an offer directly to 434, knowing that they were causing a breach of the Agreement. Plaintiff alleges that Defendant WCGM Properties LLC ("WCGM") is the general partner of 434. Plaintiffs sets forth two causes of action: 1) breach of contract against 434 and WCGM, and 2) intentional interference with contractual relations against Colliers and McDowell.

Motion

In their Motion for Summary Judgment and/or Summary Adjudication, Defendants 434 and WCGM move for summary judgment against Plaintiff or, alternatively, for summary adjudication of two issues: 1) their 22nd affirmative defense for cancellation/rescission provides a complete defense, and 2) their 16th affirmative defense of want of consideration provides a complete defense. They argue that the Agreement was cancelled on December 7, 2020, after which there was no longer any functioning contract, and after which Plaintiff did nothing pursuant to the Agreement. Accordingly, they assert, the Agreement was rescinded and there is no consideration from plaintiff because it did not perform.

Plaintiff opposes the motion. It argues that under the terms of the Agreement, Defendants are expressly obligated to pay Plaintiff the agreed-upon commission if they unilaterally terminate the Agreement, prevent Plaintiff from selling the Property, or sell the Property to a potential buyer who was not expressly excepted from the Agreement.

The moving Defendants have filed a reply, asserting that they have met their initial burden because they showed that the testimony of Plaintiff's officer admitted that the listing Agreement was canceled on December 7, 2020 and Plaintiff did nothing further pursuant to the Agreement after that date, Plaintiff later declined an opportunity to effect a sale under the Agreement, and that this declined opportunity means that under the terms of the Agreement, Defendants did not deprive Plaintiff of the opportunity to make the sale. They also submit evidentiary objections.

Authority Governing motions for Summary Judgment or Summary Adjudication

Any party may move for summary judgment or adjudication. Code of Civil Procedure ("CCP") section 437c(a), (f). A party is entitled to summary judgment if demonstrating "that the action has no merit or that there is no defense to the action or proceeding." CCP section 437c(a). For summary adjudication, the "party" may seek adjudication of one or more causes of action, affirmative defenses, claims for damages, or issues of duty if the party contends that the cause of action has no merit or that there is no defense to the cause of action, or that an affirmative defense has no merit, or that there is no merit to a claim for damages "as specified in" CC section 3294, or that a party did or did not owe a duty. CCP section 437c(f)(1).

For summary adjudication, each issue must entirely dispose of one or more 1) causes of action, 2) claims for punitive damages, 3) affirmative defenses, or 4) issues of duty. CCP section 437c(f)(1). However, there is a split on whether a court may summarily adjudicate an issue of

damages or duty that does not dispose of an entire cause of action. Such an issue could not be summarily adjudicated under some courts' interpretation that a court can grant summary adjudication on an issue of damages or duty *only* if it completely disposes of an entire cause of action. See, e.g., *Regan Roofing Co. v. Sup.Ct.* (1994) 24 Cal.App.4th 425. However, other courts disagree. See, e.g., *Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508. The language of the statute also does not seem to comport with the *Regan Roofing* approach.

When a defendant moves for summary judgment, it has the burden of first making a prima facie showing that plaintiffs *cannot establish* at least one element of any cause of action for summary judgment, or there is a *complete defense* to every cause of action. CCP §437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. For summary adjudication, the moving party has the burden of demonstrating that plaintiff cannot establish at least one elements of each cause of action at issue, each claim for punitive damages, an affirmative defense, or each issue of duty addressed in the motion, or there is a complete defense to each cause of action addressed. CCP §437c(f)(1), (o); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The moving party thus has the burden of "persuading" the court that there is no triable material issue of fact and that it is entitled to judgment in its favor as a matter of law. *Ibid*.

A defendant can show that an element cannot be established only if its undisputed facts negate plaintiff's allegations *as a matter of law* and would make it impossible for plaintiff to show a *prima facie* case. *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1597.

Once the moving party has met its burden, the party opposing summary judgment or summary adjudication has the burden of demonstrating that there is a triable material issue of fact. CCP section 437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The opposing party must merely make a prima facie showing that there is such a triable issue. *Ibid*.

Request for Judicial Notice

Defendants seek judicial notice of the SAC, a stipulation to continue trial date, and a stipulation to file an amended answer and amended answer to SAC, all filed in this action. The court may judicially notice these documents and their contents but may not judicially notice the truth of any factual assertions made therein. Within this limitation, the court GRANTS the request.

Evidentiary Objections

Defendants submit evidentiary objections with their reply. These are technically improper because they are included in the reply brief, not as a separate document, and they are not in the proper format. On a motion for summary judgment or summary adjudication, all "objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion." California Rule of Court ("CRC") 3.1354(b). Although objections "may be referenced by the objection number" in the separate statement, "the objections *must not* be restated or reargued in the separate statement." Ibid., emphasis added. Moreover, objections may only be to the evidence, not to "facts" in the separate statement. CRC 3.1352, 3.1354. Each objection must also "[i]dentify the name of the document in which the specific material objected to is located" as well as "the exhibit, title, page, and line number," must quote or set forth the objectionable evidence, and must state the grounds for objection. CRC 3.1354(b). The court disregards the objections on this basis.

In any case, even considering the merits of the objections, the court OVERRULES the objections, all to portions of the Pinza Declaration ¶8, as they are unpersuasive. The evidence of expenses which Plaintiff incurred is relevant and it is not necessary for Plaintiff at this point to demonstrate the reasonableness or unreasonableness of the expenses. Whether Defendants have a pattern or practice of pulling listing agreements is similarly not at this point necessary to establish for Plaintiff to provide evidence that having a client pull a listing agreement unilaterally could harm its reputation in the industry. It is also not necessary to have an industry expert testify in order for Plaintiff to present this evidence. The discussion of the text of the Mendoza message is not improper and the simple failure to include the whole text, or parts which may arguably qualify it, does not render the statements inadmissible. Moreover, the text of that message has been submitted into evidence so is before the court independent of this statement.

Finally, in the end, the objections also do not alter the outcome of this motion. As explained below, this court finds that Defendants fail to meet their initial burden and, even without the specific evidence addressed in the objections, Plaintiff still succeeds in demonstrating triable material issues of fact on the key points, sufficient to defeat this motion even if Defendants had met their burden. The specific issues of the expenses which Plaintiff incurred, or harm to Plaintiff's reputation, is not necessary for Plaintiff to raise sufficient triable material issues of fact. Finally, as noted above, the full text of the Mendoza message referenced in a portion of the evidence to which Defendants object is already, independently, before the court as an exhibit.

The court OVERRULES the objections.

Separate Statement and Facts

Defendants present five facts for summary judgment and repeat all of these facts for both issues presented for summary adjudication so that facts 6-10 and 11-15 are identical to facts 1-5. Plaintiff does not dispute facts 1, 2, or 4 and their counterparts for the two issues.

In fact 1, Defendants show that Steven Pinza ("Pinza") of Plaintiffs is a licensed real estate broker and California attorney.

In fact 2, Defendants demonstrate that George Mendoza ("Mendoza"), manager for WCGM, cancelled the Agreement on December 7, 2020 in a facsimile document explaining that Defendants had decided to accept an offer that they had negotiated with Colliers.

In fact 3, Defendants show that Pinza testified that he understood Mendoza to have cancelled the Agreement on December 7, 2020, after that date, there was no contract because it had been cancelled. Plaintiff in response claims that this is disputed and demonstrates that Pinza testified that there was no operative contract after December 7, 2020 simply because Mendoza had cancelled it and Pinza did not state that there had never been a contract or that cancellation had extinguished Defendants' obligations under it.

In fact 4, Defendants show that Mendoza sought to reinstate the Agreement with Pinza on December 22, 2020. Mendoza sent Plaintiff a document on that date stating,

> Sorry for the misunderstanding. I was just not thinking at the time. In any event, the offer I received through Colliers did not meet the price in either the listing with Colliers or the listing with you. I have not signed or accepted that offer.
>
> I do not want your contract cancelled, and trust you intend to continue marketing it. Thank you.

In fact 5, Defendants show that Pinza testified that he performed no services after receiving the request to reinstate because there was "no contract" by that point. Plaintiff admits that this is basically undisputed but adds that there was no reinstatement of the Agreement because Pinza did not accept Mendoza's offer.

Plaintiff sets forth additional facts of its own and it establishes all of them. It provides facts, identified by letter, for summary judgment, and repeats some of these for the two issues for summary adjudication, with some additional facts.

For summary judgment, Plaintiff sets forth facts A-K. In fact A, Plaintiff demonstrates that it and 434 entered into the Agreement on November 30, 2020, effective December 1, 2020 and Mendoza read the entire agreement, making handwritten changes. Plaintiff shows in Fact B that 434 is a limited partnership with Defendant WCGM as general partner and Mendoza as principal in charge of both. Fact C shows that Mendoza is a sophisticated investor in real estate with a college degree in business administration and 57 years of experience investing in real estate, with about 50 employees, buying and selling "a lot" of properties and doing so based on his own determination of value. Fact D demonstrates that when the Agreement was in effect, Plaintiff devoted extensive efforts to developing marketing material and preparing to market the Property. In fact E, Plaintiff shows that the Agreement made Plaintiff exclusive agent for selling the Property and that 434 would refer all inquiries to Plaintiff, with Mendoza understanding that he was not allowed to work with other brokers during that listing period. Fact F shows that 434 breached the Agreement when it dealt directly with Colliers during the listing period. In fact G, Plaintiff demonstrates that Mendoza's cancellation was unilateral, without Plaintiff's consent, even though the Agreement at Pinza Dec., Ex.1, ¶1, expressly made the listing with Plaintiff "irrevocable" and Mendoza understood that. In fact H, Plaintiff shows that Agreement ¶4A states that if, without the consent of Plaintiff, "the Property is withdrawn from sale, lease, exchange, option or other… or is sold, conveyed, leased, rented, exchanged, optioned or otherwise transferred, or made unmarketable by a voluntary act of Owner during the Listing Period," the owner, 434, must pay Plaintiff the agreed commission. In fact I, Plaintiff shows that 434 refuses to pay the commission. In fact J, Plaintiff demonstrates that Plaintiff considered Mendoza's request to reinstate the Agreement to be a sham and attempt simply to avoid paying the commission because, as Defendants' own evidence demonstrates at McFarland Dec., Ex.23, Mendoza sent a message to Pinza on December 12, 2020 stating, among other things, that he could just wait for 150 days for the listing under the Agreement to expire, and that he felt the Agreement to be still in force because he had no intention of changing or violating it at any time. Plaintiff shows in fact K that the Agreement has a space for the owner, 434, to list pre-existing prospects and thus avoid paying a commission on any prospects listed, and Mendoza testified that he was aware of that but intentionally left out the other prospect because he felt that Plaintiff would put in less effort if it knew that he had another possible deal.

Regarding the first issue for summary adjudication, Plaintiff repeats facts A-C with the same designation, repeats fact G as a new fact D, and fact H as a new fact E. As a new fact F, Plaintiff demonstrates that Mendoza had no grounds to rescind the Agreement without paying the commission.

In the second issue for summary adjudication, Plaintiff again repeats facts A-C. It provides a new fact D showing that the Agreement makes Plaintiff the exclusive agent for selling the Property, with 434 agreeing to refer all inquiries to Plaintiff and to pay Plaintiff a commission if the Property sold or if 434 prevented Plaintiff from selling it.

It repeats fact D as fact E. Plaintiff shows that the consideration for 434's promise to pay a commission is Plaintiff's efforts to develop marketing materials for the Property, marketing the Property, and attempting to sell the Property.

Analysis

Breach of contract of course requires the following elements: an enforceable contract, Plaintiff's performance or excused nonperformance, Defendant's breach, and damage to Plaintiff. *Wall Street Network, Ltd. v. N. Y. Times Co*. (2008) 164 Cal.App.4th 1171, 1178; *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co* (2004) 116 Cal. App. 4th 1375, 1391 n.6; see 4 Witkin, Cal. Proc. (6th Ed. 2021, March 2023 Update), Pleading, section 525.

A contract is "an agreement to do or not to do a certain thing." Civil Code section 1549. In general, every contract requires consideration. Civil Code section 1550; 1 Witkin, Summary of Cal. Law (11th Ed.2017, May 2022 Update) Contracts, section 202. Consideration may, with a few exceptions, be any act, a promise, forbearance, or a change in legal relations. 1 Witkin, Summary of Cal. Law (11th Ed.2017, May 2022 Update) Contracts, sections 202, 208. It is well established, therefore, that performing work or services will provide consideration. *Los Angeles Traction Co. v. Wilshire* (1902) 135 Cal. 654, 658; *Parke & Lacy Co. v. San Francisco Bridge Co*. (1904) 145 Cal. 534, 538; *Meyers v. McKillop* (1918) 37 Cal.App. 144, 145; see also 1 Witkin, Summary of Cal. Law (11th Ed.2017, May 2022 Update) Contracts, section 210. "The performance of promised services by the promisee fixes the obligation of the promisor and furnishes consideration therefor." *Coleman v. Mora* (1968) 263 Cal.App.2d 137, 149.

A party which fails or refuses to perform or satisfy conditions precedent imposed on that party, therefore, ordinarily may not require another party to perform or seek damages for breach, unless performance is excused. Civil Code section 1439; *Coleman v. Mora* (1968) 263 Cal.App.2d 137, 148-152; *McNulty v. New Richmond Land Co*. (1919) 44 Cal.App. 744, 747; 4 Witkin, Cal.Proc. (6th Ed. 2021, March 2023 Update), Pleading, sections 525, 538; 1 Witkin, Summary of Cal. Law (11th Ed.2017, May 2022 Update) Contracts, section 799, et seq.

Defendant relies on *Coleman v. Mora* (1968) 263 Cal.App.2d 137, in which plaintiff, a real estate broker, sued to recover commissions on a listing agreement with defendant for defendant's property, where the defendant sold the property through another broker. The trial court found that defendant had good cause for revoking the agency agreement with plaintiff, the revocation was communicated to plaintiff, and the revocation had been effectively accomplished prior to the sale. Plaintiff broker appealed but the appellate court affirmed on the basis that the evidence demonstrated that the defendant had a valid basis for revoking the contract prior to the sale, and therefore did not need to pay the commission.

However, the court, at 148, noted that "[t]he promises not to revoke the agency and to pay a commission did not depend upon the plaintiff's making a sale, but were offered in exchange for plaintiff's services whether they should be successful or not." The court explained, at 145,

> There is a clear distinction between contracts merely granting an exclusive agency or an exclusive right to sell and those containing in addition an express promise to pay independently of the exercise of the agency. [Citation.]
> …
> Under a contract worded as is the "exclusive" here, the broker is entitled to a commission when the owner, in derogation of the broker's rights, takes the property off the market

> [Citation], or otherwise wrongfully deprives the broker of the opportunity to make a sale at any time during the term of the agreement, as by giving a lease with an option to purchase [Citation]; or by exchanging the property [Citation];or by entering into a contract to sell [Citation.] [Citations.]

The court therefore rejected the argument that the defendant could simply revoke the listing agreement unilaterally without any cause and without paying the commission. However, it found, the evidence supported a finding that the defendant had sufficient basis for revoking or rescinding the listing agreement due to the broker's inadequate effort to perform. *Coleman*, 147-150.

Similarly, the Supreme Court in *Blank v. Borden* (1974) 11 Cal. 3d 963, at 971-974, affirmed a decision to enforce a "withdrawal-from-sale clause" in favor of a real estate broker, and awarding the broker the full commission which the broker would have received upon a sale. It found that withdrawal of the property from the transaction is fulfillment of a condition precedent to the owner's obligation to pay a commission, and the resulting action is on the debt created by the failure to pay the commission owed in the event of withdrawing. The court noted, at 972-973, '[i]f in this context we view the owner's exercise of a withdrawal-from-sale clause as an anticipatory "breach" of the main contract, the "damage" sustained by the broker would not be measured in the amount of effort expended by him prior to the "breach" but rather would be measured in terms of the value of the lost opportunity to effect a sale and thereby receive compensation.'

Civil Code section 1689 states that a party may unilaterally rescind a contract if, among others, the consideration fails in whole or in part through the fault of the party as to whom he rescinds or if the consideration fails in any material way before it is rendered to him.

Parties also may rescind an agreement by mutual consent and this consent may be express or implied by conduct. *Pennel v. Pond Union School Dist*. (1973) 29 Cal.App.3d 832, 837-838.

Defendants' evidence, as set forth above, fails to meet their burden on any point. The facts which Defendants present, and the evidence which they cite, does not demonstrate that as a matter of law there was no enforceable agreement, that Defendants properly rescinded the Agreement unilaterally, that there was mutual consent to rescind, or that Plaintiff's consideration failed. Given the facts they present and the contract, they do not show that when they informed Plaintiff that they were rescinding the Agreement the consideration had failed or that Plaintiff had failed to perform. They do not demonstrate that Plaintiff in any way agreed to the rescission, only that Plaintiff felt that they had improperly revoked or refused to comply with the Agreement without paying the commission which the Agreement required them to pay in such circumstances. The fact that Plaintiff, after Defendants' purported rescission or revocation, felt that there was no longer an operative agreement binding Plaintiff to do anything does not indicate that Plaintiff consented to any revocation or rescission. Moreover, the fact that Plaintiff did nothing more pursuant to the Agreement after Defendants stated that they were revoking or rescinding it, does not demonstrate as a matter of law that their consideration failed. Defendants do not demonstrate that Plaintiff at that point had any further duty to perform in order to receive the commission which Plaintiff demands.

Moreover, even if Defendants had met their burden, Plaintiff's evidence creates triable materials issues of fact on the key points which Defendants raise in this motion. Plaintiff's facts, and the cited evidence supporting them, as set forth above, are sufficient to demonstrate triable materials issues of fact as to whether Defendants breached the Agreement when

unilaterally revoking or rescinding it on December 7, 2020; whether Defendants were free to revoke or rescind the Agreement unilaterally without paying the commission; whether Plaintiff agreed to the rescission or revocation; whether as a result of that revocation or rescission Plaintiff was subsequently entitled to the commission pursuant to the terms of the Agreement without doing anything more pursuant to the Agreement; whether Plaintiff had a duty to perform any further pursuant to the Agreement in order to receive the commission; whether Plaintiff had any duty to accept or recognize Defendants' purported attempt to reinstate the Agreement on December 22, 2020 in order to receive the commission; and whether Plaintiff's failure to accept the purported reinstatement of the Agreement, or failure to perform further bars in or any way affects, Plaintiff's right to receive the commission. In short, the facts and the supporting evidence create triable materials issues regarding all of the points which Defendants make in this motion, even if Defendants had met their burden which, once again, this court finds they failed to do.

Conclusion

The court DENIES the motion in full. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

2. SCV-271400, FFOP, Inc. v. Murillo

Demurrer to Plaintiffs' Complaint is **DROPPED**. It is **MOOT** as a result of the fact that Plaintiffs filed a dismissal, with prejudice, of their claims against the demurring parties on January 25, 2023.

3. SCV-272147, Sonoma Brands II, L.P. v. Guayaki Yerba

Motion for Molly M. Jamison to Appear as Counsel Pro Hac Vice GRANTED.
Motion for Kirsten Jackson to Appear as Counsel Pro Hac Vice GRANTED.

Facts

Plaintiffs allege that they are an investment firm with deep roots in Sonoma County and were among the largest and earliest outside investors in Defendant but that the latter has breached its contractual obligations to Plaintiffs by offering other investors rights and privileges not given to Plaintiffs, embarked on a campaign to enrich insiders while diluting the interests of outsiders, and operate secretly without letting Plaintiffs obtain any access to its books and records. Plaintiffs seek access to books and records in order to determine what Defendant has been doing and whether, and how, it has breached its duties to Plaintiffs.

Motions

Plaintiffs bring two motions for counsel to appear pro hac vice, the Motion for Molly M. Jamison to Appear as Counsel Pro Hac Vice and Motion for Kirsten Jackson to Appear as Counsel Pro Hac Vice.

According to California Rule of Court ("CRC") 9.40, an attorney must meet 3 requirements to appear *pro hac vice*. The attorney must: 1) be admitted to practice law in a U.S. court, or in the highest court of any state or territory; 2) not be a California resident nor regularly engaged in practice or business here; and 3) a member of the California bar must be associated as attorney of record in the case. CRC 9.40(a). Normally, repeated appearances *pro hac vice* is grounds to deny the petition. *Walter E. Heller Western, Inc. v. Sup. Ct.* (1980) 111 Cal.App.3d 706, 709-710.

Therefore, the attorneys must give a verified application 1) giving their residence and business address; 2) giving the courts where they are entitled to practice; 3) that they are in good standing; 4) that they have not been suspended or disbarred; 5) any court and case in which they have filed applications to appear *pro hac vice* in California during the past 2 years, along with the date and whether the application was granted; and 6)the name, address, and phone number of the California Bar member who is attorney of record. CRC 9.40(d). In addition, the application must be served on every party that has appeared and on the State Bar of California.

The verified application submitted with each motion provides all of the required information and both attorneys seeking to appear pro hac vice meet the requirements. Proofs of service show that both motions have been served on Defendant and on the State Bar of California.

Conclusion

The court GRANTS the Motion for Molly M. Jamison to Appear as Counsel Pro Hac Vice and the court GRANTS the Motion for Kirsten Jackson to Appear as Counsel Pro Hac Vice. Plaintiffs shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.