TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, August 12, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via** Zoom, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 26CV01405, Gavriloff v. Blue

Defendant's unopposed demurrer to the First Cause of Action of Plaintiff's First Amended Complaint is **SUSTAINED**. Leave to amend is **DENIED**.

Defendant's request for judicial notice is **GRANTED**.

Defendant's counsel shall submit an order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

On February 11, 2026, Plaintiff, Dave Gavriloff, filed suit against Defendant, Fredrick Blue, asserting causes of action for Foreclosure of Mechanic's Lien, Breach of Contract, Breach of Implied in Fact Contract, Promissory Estoppel, Quantum Meruit, Account Stated, Conversion, Replevin, and Declaratory Relief. Plaintiff attached a copy of the Mechanic's Lien to the complaint as Exhibit A. As reflected on the attachment, the mechanic's lien was recorded on November 12, 2025.

On March 26, 2026, Plaintiff filed his First Amended Complaint ("FAC") amending his causes of action to Foreclosure of Mechanic's Lien, Breach of Contract, Quantum Meruit, Account Stated, and Declaratory Relief. Plaintiff did not attach a copy of the Mechanic's Lien to the FAC.

Defendant now demurrers to the First Cause of Action for Foreclosure of Mechanic's Lien arguing that the claim is time-barred pursuant to Civil Code § 8460. Defendant also argues that the Mechanic's Lien is procedurally defective in other ways.

The Court agrees with Defendant that the claim for Foreclosure of Mechanic's Lien is time-barred pursuant to Civil Code § 8460(a), which provides, "The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable." The Mechanic's Lien was recorded on November 12, 2025. Excluding the first day and including the last, as required by CCP § 12, Plaintiff's claim of lien expired on February 10th. This action was commenced on February 11, 2026, 91 days after recordation. Accordingly, the lien is unenforceable. Since the lien is unenforceable, the Court need not reach the remaining procedural deficiencies argued by Defendant.

2. <u>25CV05359, Cunningham v. Burks</u>

Defendant Scott Oechslin's <u>unopposed</u> demurrer to Plaintiff's First Amended Complaint ("FAC") is **SUSTAINED**. Leave to amend is **DENIED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

<u>Analysis</u>:

Plaintiff filed a complaint, later amended, against several defendants alleging several causes of action arising out of a transaction for the sale of two floating homes to Plaintiff. Plaintiff alleges a failure to encumber one of the floating homes as the basis for his causes of action. As relating to the moving defendant, Scott Oechslin, the only facts alleged specific to him are that (1) he was one of Plaintiff's loan agents (FAC ⁋ 22) and (2) he told Plaintiff that Defendant Burks intended to remodel the floating home and sell it. (FAC ⁋ 23.)

Defendant Oechslin herein demurrers to each cause of action of the FAC alleged against him as being uncertain and as failing to state a cause of action against him. Plaintiff has been served with the motion and Defendant's counsel has represented that he spoke with Plaintiff's counsel regarding this motion. Yet, Plaintiff has failed to file an opposition.

I. <u>First Cause of Action – Breach of Fiduciary Duty of Real Estate Brokers</u>

This cause of action is alleged against "Brokers, Salespersons, and Brokerage Firm Defendants" These terms—"Brokers," "Salespersons," and "Brokerage Firm Defendants"—are not defined anywhere in the FAC. Moreover, there is no paragraph under the "Parties" portion of the FAC that is specific to Defendant Oechslin. It is unclear who Plaintiff is referring to when using these terms; therefore, it is unclear who this cause of action is alleged against. The cause of action is uncertain.

Assuming this cause of action is alleged against Defendant Oechslin, Plaintiff also fails to state sufficient facts to support this cause of action against him in his personal capacity. "'The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.'" (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932.) A fiduciary duty is founded upon a special relationship imposed by law or when "confidence is reposed by persons in the integrity of others" who voluntarily accept the confidence. (*Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg* (1989) 216 Cal.App.3d 1139, 1150.)

Plaintiff alleges that Defendant Peter Kerston brokered the loan from Plaintiff to Defendant Burks. He alleges only that Defendant Oechslin was a "loan agent," with no further explanation of what this role entailed or the extent of Defendant Oechslin's involvement in the transaction. Plaintiff has not alleged facts supporting the existence of a fiduciary relationship between Plaintiff and Defendant Oechslin.

II. Second Cause of Action – Professional Negligence

Here, as with the First Cause of Action, this cause of action is alleged against "Brokers, Salespersons, and Brokerage Firm Defendants." For the same reasons explained above, this cause of action is uncertain.

Moreover, Plaintiff has failed to state sufficient facts to support this cause of action against Defendant Oechslin in his personal capacity. "The elements of a claim for professional negligence are: '(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.'" (*Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1095.) California's general rule is that "privity of contract is a requisite to a professional negligence claim." (*Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137.) As discussed further below, Plaintiff has failed to allege the existence of a contract between himself and Defendant Oechslin. He has failed to allege sufficient facts supporting the existence of a professional duty owed by Defendant Oechslin to Plaintiff.

III. Third, Fourth, Fifth, and Sixth Causes of Action – Constructive Fraud, Intentional Misrepresentation, Concealment, and Negligent Misrepresentation

Plaintiff asserts four fraud causes of action against all defendants. "To withstand demurrer, facts constituting every element of fraud must be alleged with particularity." (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) Plaintiff has failed to do so for any of the fraud causes of action. They are each alleged in general terms and contain no facts specific to Defendant Oechslin.

IV. Seventh Cause of Action – Breach of Contract

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1489.) "[T]he complaint must indicate on its face whether the contract is written, oral, or implied by conduct." (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 458–459.) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect." (*Ibid.*) "In order to plead a contract by its legal effect, plaintiff must "allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions." (*Ibid.*)

Plaintiff has failed to allege the existence of a contract between himself and Defendant Oechslin. Assuming the loan agreement is the contract on which this cause of action is based, Plaintiff has failed to allege that Defendant Oechslin was a member to that contract. Plaintiff only specifically identifies "Defendants Burk and Burk & Co." as having executed the loan.

V. Ninth Cause of Action – Financial Elder Abuse

To prevail on a cause of action for financial elder abuse, a plaintiff must prove all of the following:

1. That Defendant either took/hid/appropriated/obtained/retained Plaintiff's property, or assisted in taking/hiding/appropriating/obtaining/retaining Plaintiff's property;
2. That Plaintiff was 65 years of age or older/a dependent adult at the time of the conduct;
3. That Defendant took/hid/appropriated/obtained/retained/assisted in taking/hiding/appropriating/obtaining/retaining the property for a wrongful use or with the intent to defraud or by undue influence;
4. That Plaintiff was harmed; and
5. That Defendant's conduct was a substantial factor in causing Plaintiff's harm.

(CACI 3100.) Statutory causes of action, such as financial elder abuse, must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

Plaintiff alleges generally that "Defendants' actions in appropriating, obtaining, or retaining plaintiff's property for a wrongful use or with the intent to defraud as described above in this complaint constitute elder financial abuse." Plaintiff fails to plead this action with particularity. Plaintiff also fails to describe any actions taken by Defendant Oechslin that would constitute taking, hiding, appropriating, obtaining, or retaining Plaintiff's property.

VI. Leave to Amend

It is Plaintiff's burden to show how the complaint can be amended to state a cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Since Plaintiff failed to oppose this motion, he has failed to meet this burden. Accordingly, leave to amend is denied.

3. <u>24CV06857, Dietz v. Ford Motor Company</u>

Plaintiff's motion for attorney's fees and costs is **GRANTED** in the amount of $18,601.14. This consists of $12,917.50 in attorney's fees and $5,683.64 in costs.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

<u>Analysis:</u>

On November 14, 2024, Plaintiff filed a complaint alleging causes of action against Defendants under the Song-Beverly Consumer Warranty Act. The matter involved a few discovery motions. It was set for trial on March 13, 2026, but ultimately settled on March 4, 2026. Plaintiff obtained a settlement against Defendant Ford Motor Company for $210,000.00 in damages. The parties agreed that Plaintiff was the prevailing party and that attorney's fees and costs would be resolved by motion.

Defendant does not herein contest that Plaintiff is the prevailing party and is entitled to attorney's fees and costs. Defendant argues that Plaintiff's request is inflated and should be reduced. Plaintiff seeks a total of $25,059.89, which is based on a lodestar of $12,917.50, a multiplier of 1.5 in the amount of $6,458.75, and costs of $5,683.64. As outlined below, the Court finds the lodestar to be reasonable but no multiplier shall be applied.

I. <u>Loadstar</u>

The standard for calculating attorney fee awards under California law, "[O]rdinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate…" (*PLCM Group, Inc. u. Drexler* (2000) 22 Cal.4th 1084, 1095.)

> The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

(*Ibid*.) In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*Ibid*.) "[T]he trial court has broad authority to determine the amount of a reasonable fee." (*Ibid*.) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court. [Citation.]" (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240.)

Here, the hourly rates sought by Plaintiff are outlined on page 8 of Exhibit A to the declaration of Roger Kirnos. The highest hourly rate requested is $600 for Mr. Kirnos who is the managing partner of Plaintiff's Counsel's firm. The next highest ranges from $500-$525 for Amy Morse, a partner. Hourly rates for associates range from $400 to $515 depending on experience. The highest rate sought for a paralegal is $200. The Court finds these rates to be reasonable considering the locality. They shall be granted.

Plaintiff seeks a total of 34.5 billed hours on this case. The Court finds this request to be reasonable. Defendant argues in opposition that time spent on motions to compel discovery should be reduced since many of the motion were ultimately able to be resolved informally. The Court does not find this argument to be persuasive. Just because parties ultimately resolve the issues informally does not mean that the motions were not reasonable or necessary. Defendant also argues that the anticipated hours for responding to Defendant's opposition should not be granted. This argument is likewise not persuasive. Plaintiff shall be granted 34.5 hours of time for this matter. The lodestar of $12,917.50 is reasonable and granted.

II. <u>Multiplier</u>

"The 'experienced trial judge is the best judge of the value of professional services rendered in his court…'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The relevant factors in determining the proper multiplier include,

> (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.

(*Ibid*.)

Plaintiff seeks a fee multiplier of 1.5 considering this matter was taken on a contingency. The Court does not find a multiplier to be appropriate in this case. Though it was taken on a contingency, the matter did not require much attorney time to be expended and settled after only 15 months with little motion practice involved. The Court finds the lodestar to be sufficient to compensate Plaintiff's counsel for the risks of taking this matter on contingency. The Court declines to apply a multiplier.

III. <u>Costs</u>

Plaintiff seeks $5,683.64 in costs. Defendant's only argument against these costs is that Plaintiff did not attempt to informally resolve the costs associated with recovering attorney's fees by providing supporting documentation before filing the motion, so they should be denied. Defendant has not cited any authority to support this argument, and it is unpersuasive. Moreover, Defendant has not filed a motion to tax costs. Plaintiff's un-objected to memorandum of costs is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred. (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624.) The costs requested by Plaintiff are compensable and are reasonable. They are granted.

4. <u>25CV07600, Draper v. George</u>

Plaintiffs' motion to appoint partition referee is **GRANTED.** The Court hereby appoints Amy Harrington as partition referee for the purpose of selling the Subject Property. Amy Harrington shall post a bond of $5,000. The Court finds Amy Harrington's hourly rate of $475 per hour to be reasonable. At the conclusion of the sale of the property, Amy Harrington shall file a final account and request for discharge.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

On October 27, 2025, Plaintiffs Jeffrey Draper and Barbara Jason filed this partition action against Defendant Darren George. As alleged in the Complaint, the parties to this case are siblings who each own a one-third interest in the property. Defendant Darren George is currently in possession of the property. As alleged, there was an agreement between the parties that when Defendant's daughter left the property to attend college the property would be sold. Plaintiffs allege that the condition has occurred, but the property has not been sold. Plaintiffs seek partition by sale.

This matter came on for hearing on June 24, 2026 at which time the Court heard oral argument from the parties. Prior to the hearing, the Court issued a tentative ruling denying the motion because Plaintiffs had not shown the parties' interests in the property and because Plaintiffs' had not supported their claim that partition by sale is necessary. At the hearing, Plaintiffs' counsel argued that Plaintiffs have sufficiently shown the interests of the parties in the property as reflected in the Probate Order. However, Plaintiffs did not provide further evidentiary support for their claim that partition by sale is necessary. The Court took the matter under submission.

On June 30, 2026, the Court issued an order after hearing explaining that Plaintiffs had failed to make an evidentiary showing that partition by sale is necessary rather than partition in kind. The Court granted the Plaintiffs the opportunity to do so by supplemental declaration.

Plaintiffs have now submitted evidence showing that partition by sale is necessary. They have also sufficiently shown the parties' interests in the property. Defendant submitted a supplemental declaration in which he expresses that he does not oppose a sale of the property, but opposes the appointment of a referee because he believes the parties can sell the property on their own. However, this matter has been pending since October 2025 and this motion has been pending since January and neither party has represented that any strides have been taken to place the property on the market other than simply identifying qualified realtors. Having made the required evidentiary showing, Plaintiffs are entitled to partition and the appointment of a referee will ensure expeditious resolution of this matter.

5. 25CV03111, Garcia v. Santa Rosaidence Opco, LLC

Plaintiff's motion to compel further responses from Defendant Santa Rosaidence Opco, LLC dba Santa Rosa Post Acute to Plaintiffs' Special Interrogatories (Set One) is **DENIED** as being untimely.

Due to the lack of opposition, the Court's minute order shall constitute the order of the Court.
Analysis:

Plaintiff propounded Special Interrogatories, Set One, on Defendant on August 22, 2025. Defendant served responses on November 7, 2025. According to the record submitted by Plaintiff, the most recent communication the parties had regarding an extension to file this motion occurred on February 5, 2026. The parties agreed that Defendant's time for providing further responses would be extended for two days after Plaintiff provided an updated list of discovery still requested, and then Plaintiff's deadline for filing this motion would be mutually extended. Plaintiff provided the updated list on February 5th, giving Defendant until Monday, February 9th to respond. It is clear the parties intended for Plaintiff to have 45 days from February 9th to file this motion. Therefore, Plaintiff's deadline for filing this motion was March 26, 2026. (CCP § 2030.300(c).) Plaintiff gave notice of this motion on April 17, 2026 and filed it on May 15, 2026, both well past the statutory deadline. Accordingly, Plaintiff has waived the right to compel further responses and this Court is without jurisdiction to hear this motion. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

6-7. <u>25CV02727, Hagos v. Vigilant Eye Security, Inc</u>

This is a joint ruling on Plaintiffs' Motion to Compel Further Responses to Written Interrogatories from Defendant Shafi Nomair and Plaintiffs' Motion to Compel Further Responses to Demands for Production of Documents and Copying, Set One from Defendant Shafi Nomair. Each of the motions is unopposed.

Plaintiffs' motions are **GRANTED**. Defendant shall provide complete, code-compliant, objection-free supplemental responses to each of the discovery requests described in Plaintiffs' motions no later than 20 days from service of notice of entry of an order on this motion. Plaintiffs' requests for sanctions are **GRANTED** in the total amount of $3,937.78. The sanctions shall be imposed against Defendant and Defendant's counsel jointly.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

<u>Analysis</u>:

This matter involves an employment dispute wherein Plaintiffs assert that they worked for Defendants and Defendants engaged in several Labor Code violations.

On January 3, 2026, counsel for Plaintiffs served counsel for Defendant Shafi Nomair with special interrogatories, set one, employment form interrogatories, set one, general form interrogatories, set one, and demands for production of documents, set one. Responses to the discovery requests were due February 18, 2026, but Defendant did not serve his responses to the interrogatories until March 20, 2026. Therefore, objections had been waived.

On April 8, 2026, counsel for Defendant and counsel for Plaintiffs met and conferred via telephone concerning the discovery responses. As of the filing of these motions, Defendant's counsel has not produced any supplemental responses. These motions are unopposed.

The Court finds Defendant's responses to each of the discovery requests to be evasive and/or incomplete. Defendant has failed to justify any of the objections raised. Moreover, since the responses were untimely, all objections have been waived. As an example the evasiveness of Defendant's responses, General Form Interrogatory asks Defendant to state:

> (a) The name, ADDRESS, and telephone number of your present employer or place of self-employment; and

> (b) The name, ADDRESS, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the INCIDENT until today.

Defendant responded, as he did for the majority of the discovery requests,

> After reasonable and good faith inquiry, representative of Defendant lacks sufficient information to respond to the request as review and inquiry have not yet been completed. Defendant's representative is not aware of any third party entities or natural persons who possess the requested information. Discovery is continuing and Defendant will supplement this response upon further inquiry.

This answer is clearly evasive—as most of Defendant's answers are. Defendant shall provide further responses that are complete, code-compliant, and objection-free to each of the discovery requests outlined in Plaintiffs' separate statements.

The Court finds sanctions to be warranted pursuant to CCP §§ 2030.300 and 2031.310. Plaintiffs seek $2,563.89 for the motion regarding the written interrogatories and $1,373.89 for the motion regarding the inspection demands. The Court finds these requests to be reasonable. Monetary sanctions are granted in the total amount of $3,937.78 for these motions. The sanctions shall be imposed against Defendant and Defendant's counsel jointly. Sanctions are imposed jointly against Defendant's counsel because it is clear that counsel advised Defendant's blatantly evasive answers and because of counsel's repeated failure to respond to Plaintiff's counsel's attempts to resolve this matter informally.

*****This is the end of the Tentative Rulings*****