TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 11, 2024 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: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

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. 24CV00100, Siriuspoint Specialty Insurance Corporation v. Pace Supply Corp.

Counsel Jenna Bergman’s unopposed application to appear *pro hac vice* for Plaintiff Sirius Specialty Insurance Corporation is **GRANTED** pursuant to California Rules of Court, Rule 9.40. Unless oral argument is requested, the Court will sign the proposed order lodged on this motion.

2. 24CV00878, Shrader v. SRPD

The hearing on California Forensic Medical Group, Inc.'s ("CFMG") Demurrer is **CANCELLED** based on CGMG's Notice of Stay as to all parties filed on November 27, 2024. Per the Notice, there are pending bankruptcy proceedings as to CFMG and the automatic stay is with regard to all parties in the matter. CFGM is directed to request the Court to reset the hearing on its demurrer when the bankruptcy has been discharged.

3. 24CV02105, Brunetta v. General Motors, LLC

Plaintiffs Allen and Deanne Brunetta's motion to deem as admitted the facts specified in Plaintiffs' Request for Admissions, Set One, ("RFAs") served on Defendant General Motors, LLC ("GM") is **DENIED**.

FACTS & PROCEDURE

Plaintiffs served the RFAs on GM on July 22, 2024. (Motion, 2:16-19.) GM served responses on August 23, 2024, including responses to the RFAs. (Decl. Hendrickson, Exhibit B; Decl. Davis, Exhibit A.) On September 4, 2024, GM served verifications for the discovery responses. (Decl. Hendrickson, Exhibit C.) Plaintiffs served a meet and confer correspondence on October 9, 2024, regarding deficiencies in the responses and stating the basis for a further or more complete response. (*Id*. at Exhibit D.) In response, GM's counsel forwarded the email that had included the responses to the RFAs sent on August 23, 2024. (*Id*. at Exhibit E.)

ANALYSIS

A party who "fails to serve a timely response" to requests for admissions waives any objection to those requests. (C.C.P. § 2033.280(a).) After a lack of response, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).)

Plaintiffs filed this motion arguing GM never served any responses to the RFAs and requests sanctions of $3,000.00 for 4 hours of work on the motion and an expected 1 hour work on the reply at a rate of $600.00, plus $60.00 in filing costs. (Decl. Hendrickson, ¶ 10.)

GM opposes the motion arguing that Plaintiffs failed to meet and confer in good faith as to whether they had issues with GM's responses and the motion is deficient because GM did serve timely responses to the RFAs. In the Reply brief, Plaintiffs state that GM's opposition still fails to provide any response to the RFAs.

The Court finds that GM timely served responses to the RFAs, which included objections and an admission or denial in every response. Per C.C.P. section 2033.280, moving party did not provide a sufficient basis for this Court to grant the motion as there is not a lack of response.

CONCLUSION

Based on the foregoing, the motion is **DENIED**. Sanctions will not be awarded. Moving party shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV03149, London v. City of Healdsburg

Petitioner London's request under Government Code section 946.6 to be relieved from the requirements under Government Code section 945.4 is **GRANTED**.

PROCEDURAL HISTORY

On or about June 10, 2023, Petitioner claims that she was seriously injured while walking on a sidewalk in the City of Healdsburg (the "City"). (Petition, 3:6-7.) The City denied Petitioner's tort claim filed on March 25, 2024, because it was filed beyond the six month period after she sustained the injury, even though the claim contained a declaration explaining the reason for the delay was due to physical and mental incapacity during the claim period. (*Id*. at 3:7-10.) Petitioner filed this Petition on May 21, 2024, which is within six months of the denial letter sent on April 22, 2024. (*Id*. at 3:10-11.)

ANALYSIS

Legal Standard

Per Government Code section 945.4, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with section 900 et. seq and 910 et. seq, until a written claim has been presented to the public entity and has been acted upon or rejected by the board.

Per Government Code section 946.6, if leave to present a claim is denied, then a party may petition the court for an order relieving the petition from the requirements of section 945.4. The petition filed must show that an application was made to the board under section 911.4 and was denied, but there was a reason for failure to present the claim within the time limit specified and other information as required by section 910 has been provided. (Govt. Code § 946.6(b).) The petition must be filed within six months after the denial. (Govt. Code § 946.6.)

If the application made to the board was within a reasonable time under section 911.4(b) and it was denied, then the Court may relieve the petition if: (1) the failure was through a mistake, inadvertence, surprise, or excusable neglect, unless the public entity can show it would be prejudiced in defense of the claim should the court relieve the petitioner; (2) the petitioner was a minor at the time of injury during the entire time period allotted for presentation of the claim; (3) the petitioner was a minor at some of the time allotted for presentation of the claim and the application was presented within six months of the person turning 18; (4) the petitioner was physically or mentally incapacitated during all of the time specified for the presentation of the claim and failed to present a claim during that time; (5) the petitioner was physically or mentally incapacitated during any of the time specified for presenting the claim and failed to do so, but the

application was presented within six months of the person no longer being physically or mentally incapacitated; or (6) the injured person died before the expiration of the time to bring the claim. (Govt. Code § 946.6(c).)

Petition

Petitioner London moves to be relieved from the six month requirement to submit a government claim pursuant to Government Code section 945.4 due to excusable neglect from recovery and pain associated with her injuries. (Petition, 4:22-26.) Petitioner claims that she failed to submit a tort claim on time because she was experiencing significant pain through the end of December 2023. (*Id*. at 3:14-15.) Petitioner was in the hospital six days after the injury and for the first five weeks post-surgery, was unable to care for herself and hired two full-time caregivers to help her. (*Id*. at 3:23-25.) Petitioner was physically and mentally incapacitated to present a tort within the prescribed six months because the pain she experienced after the injury impacted her clarity of thought and decision-making due to breaking her hip and needing a complete hip replacement. (*Id*. at 3:15-19.)

In support of the Petition, Petitioner's counsel filed a declaration stating that medical records have been requested from Providence Hospital, but the documents were not yet received from Petitioner's treating physicians. (Declaration of Holman, ¶ 2.) Instead, Petitioner has supplied her medical bills to establish the severity of her injuries. (*Id*. at ¶ 3, Exhibit A.)

City's Opposition

The City argues that the petition fails to meet its obligation to present sufficient evidence entitling Petitioner to the relief sought. The City points out that there is not any competent medical evidence, medical records, or medical opinions, but does include a statement from Plaintiff's orthopedic surgeon that is not supported by any signed declaration from that surgeon.

The City also points out that no case law has been cited by Petitioner in support of the petition and that only section 946.6 has been cited. The City cites *Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373, 1385-1386, which case held that, while excusable may not generally be found when the injured party fails to take any action in pursuit of the claim within the six-month period including retaining counsel, in extreme instances of physical or mental disability, or on debilitating emotional trauma, excusable neglect may be found. For example, a petitioner who became a quadriplegic from a car accident, or who had to relearn life skills for six months and could not sit up without assistance and did not leave her bedroom, could be excused. (*Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373, 1385-1386.) The City's position is that because Petitioner has not sufficiently shown that she was physically or mentally incapacitated for the entire six-month period, she has not satisfied her burden of proof.

Reply Brief

In the Reply brief, Petitioner argues that the City is misstating the law and that it is enough to show that Petitioner had a physical or mental disability that limited her ability to function and seek out counsel to establish excusable neglect. Petitioner argues that it is enough that she

suffered a hip injury for which she needed a hip replacement surgery, and her injuries impacted her "clarity of thought and decision-making." When she regained the ability and mental clarity, Petitioner immediately sought counsel out and filed the Petition.

Application

Petitioner has within the time period allotted after a denial brought the Petition seeking relief from the requirements of Government Code section 945.4. Plaintiff alleged that she suffered a debilitating hip injury and provided evidence that she has attended physical therapy and received medical treatment and medication throughout the time period from the date of injury to time that she filed the claim with the City. Though Petitioner has not yet received the requested medical records from her treating physicians, she has alleged enough in the Petition to show that she was physically or mentally incapacitated during the time specified for presenting the claim and failed to do so, but presented the application within six months of her no longer being physically or mentally incapacitated as is allowed under Government Code section 946.6(c)(5).

CONCLUSION

Based on the foregoing, the Petition is **GRANTED**. Petitioner shall submit a written order on her Petition to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 24CV03677, Miller v. Capital One, N.A.

Defendant Capital One, N.A.'s ("Capital One") demurrer to Plaintiff Miller's Complaint is **SUSTAINED without leave to amend** as to the entire Complaint, per Code of Civil Procedure section 430.10(e).

Capital One's objection to the late-filed opposition is **SUSTAINED** per Code of Civil Procedure ("C.C.P.") section 1005(b). The Court will not consider the untimely opposition.

PROCEDURAL HISTORY

Plaintiff Miller filed a Petition as personal representative for her mother's ("Decedent") estate in County of Sonoma's Probate Court on November 15, 2021, under Case No. SPR-87467, which was later amended on May 6, 2022. (Demurrer, 5:8-10.) The initial Petition sought the transfer of funds totaling $61,701.11 from two Capital One accounts that belonged to Decedent to Plaintiff. (Request for Judicial Notice, Exhibit A.) The Petition also requested that the Court order that Capital One Bank acted in bad faith in wrongfully taking the funds and were liable for twice its value as well as attorney's fees of $19,334.51. (*Id.*) Capital One had not previously released the funds to Plaintiff because it claimed Decedent designated charities as the accounts' beneficiaries. (Demurrer, 5:13-15.) On March 4, 2022, the Probate Court heard Plaintiff's fees request in the Petition and denied it holding that attorney's fees were improper as Plaintiff was self-represented and because there was no evidence that Capital One acted in bad faith. (Demurrer, 8:13-16; Request for Judicial Notice, Exhibit C.) On June 24, 2022, the Court entered an order granting

the Amended Petition, which removed the fees requests and any allegation of wrongdoing or bad faith on the part of Capital One; the Court ordered Capital One to transfer 100% of the funds to Plaintiff as the personal representative of her mother's estate, or alternatively, to mail a check for 100% of that value to Plaintiff's address. (Request for Judicial Notice, Exhibit G.)

Two years later, Plaintiff brought this Complaint against Capital One alleging three causes of action for intentional tort, elder abuse, and breach of covenant of good faith and fair dealings. (Complaint, Intentional Tort Attachment, p. 5, IT-1.) Plaintiff claims she attempted to obtain the $60,000.00 deposited in Capital One checking accounts that belonged to Decedent, but that Capital One would not release the funds because there were other named beneficiaries on the accounts. (Complaint, Exemplary Damages Attachment, p. 4, Ex-2.) The Complaint seeks an unstated amount of exemplary damages. (*Id*. at Ex-3.)

Capital One's counsel met and conferred with Plaintiff arguing that the Complaint was deficient because it failed to state facts sufficient to state any causes of action, because the claims are barred by the statute of limitations, and because res judicata and collateral estoppel bar Plaintiff from bringing these claims. The parties did not resolve the issues, so Capital One filed this demurrer. Plaintiff filed a late opposition on December 2, 2024, in response to which Capital One filed an objection on December 4, 2024.

OBJECTIONS TO EVIDENCE

Capital One's objection to evidence requests the Court to not consider Plaintiff's late-filed opposition per Code of Civil Procedure § 1005(b) and California Rules of Court, rule 3.1300. Per section 1005, an opposition must be served at least nine *court days* before the hearing, unless a shorter time is permitted, and service must be reasonably calculated to ensure delivery to the other parties no later than the close of the next business day. Capital One claims that as of date it filed the objection to the opposition, it had not received any opposition by mail or email. Counsel for Capital One became aware that an objection had been filed when counsel checked the Court's docket via LexisNexis, but as there was no document available to download from LexisNexis and the Court's website also did not have any document available to download, Capital One could not review the opposition or reply to it.

On December 4, 2024, Plaintiff filed a proof of service, and it stated that Plaintiff served Capital One's counsel on December 2, 2024, by email to "aborlund@dollarmir.com" which contains a typographical error. However, Plaintiff attached an email to the proof of service showing an attachment was served to the Capital One's counsel's correct address at "aborlund@dollamir.com" on December 2, 2024.

The parties dispute whether the opposition was received by Capital One and the Court is uncertain whether there was any technical issue that caused Capital One to not receive the opposition by email even though it was sent to the correct email address on December 2, 2024.

Regardless, the Court finds that the opposition was untimely served. Plaintiff served the opposition on December 2, 2024, which is 9 calendar days before the hearing. Section 1005(b) specifically requires that an opposition be served 9 *court days* before the hearing date, which

does not include any weekends. In order to have timely served the opposition, Plaintiff would have had to file it on November 26, 2024, at the latest, and serve them on Capital One by the close of the next business day on November 27, 2024.

For these reasons, the Court finds that the opposition was untimely filed and improperly served on Capital One, and Capital One's objection is **SUSTAINED**. The Court will not consider the untimely opposition.

REQUEST FOR JUDICIAL NOTICE

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Capital One requests judicial notice of seven court records filed in County of Sonoma Probate Case No. SPR-87467. The requests are **GRANTED**.

DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Capital One's Demurrer

Statute of Limitations

Per California's discovery rule, "suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." (*Platt Elec. Supply, Inc. v. EOFF Elec., Inc.* (2008) 522 F.3d 1049, 1055.)

As opposed to examining whether a plaintiff suspects facts supporting each specific legal element of a cause of action, courts look to "whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." (*Id*.)

Capital One argues that all of Plaintiff's claims are time-barred. The statute of limitations on a claim for breach of implied covenant of good faith and fair dealing or for financial elder abuse is four years, while the limitation on a claim for intentional infliction of emotional distress is two years. (C.C.P. §§ 335.1, 337(1); Welf. & Inst. Code § 15657.7.) Plaintiff claims in the Complaint that, "Capital One, N.A. held monies in decedent's deposit checking account for 7 years before releasing money to the estate of decedent." (Complaint, ¶ 15.) Based on this time period, Capital One argues that Plaintiff's claims are time-barred.

The proposed order that Plaintiff filed with the initial complaint for the Probate Court's consideration in Case No. SPR-87467 specifically stated that, "Capital One Bank acted in bad faith wrongfully taking the funds in the two (2) bank accounts which belonged to the estate and Capital One Bank shall be liable for twice the value of the property recovered by this action which is $123,402.22." (Request for Judicial Notice, Exhibit A.) This suggests that Plaintiff at least had reason to suspect that a type of wrongdoing injured her at the time the Complaint was filed on November 15, 2021, and as emphasized multiple times in the Complaint filed in this action, Plaintiff as personal representative of Decedent's estate was aware the money was held in the Capital One accounts for seven years after Decedent passed away.

Based on the foregoing, Plaintiff has not sufficiently shown that she did not have reason to know or suspect there was some wrongdoing on the part of Capital One that potentially harmed her in the seven years that she was investigating the accounts after Decedent passed away. The Court finds that the statute of limitations has run on all three of Plaintiff's claims.

Res Judicata and Collateral Estoppel

Res judicata and collateral estoppel prevent a plaintiff from relitigating the same cause of action in a second suit between the same parties or parties in privity with them and also bars a plaintiff from bringing claims that could have been raised in the prior proceeding. (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1190-1191.) Once an issue has been fully litigated in one action, that resolution is binding in a subsequent action notwithstanding whether a party failed to raise certain matters against the other party, which if asserted could have produced a different outcome. (*Carroll v. Puritan Leasing Co.* (1978) Cal.App.3d 481, 490.)

Capital One argues that Plaintiff sought damages in a petition for Attorney's Fees in the Probate action on the exact same facts alleged in this Complaint but failed to raise these same causes of action in the Probate action. (Demurrer, 8:13-16.) The Probate Court held that Plaintiff was not entitled to attorney's fees as requested in the amount of $19,334.51 because she was self-represented and found there was no evidence that Capital One acted in bad faith. (Request for Judicial Notice, Exhibit C.)

The Court finds that Plaintiff's claims are barred by *res judicata* and *collateral estoppel* because Plaintiff failed to raise these causes of action in the Probate action against Defendant in which matter the issue has already been fully litigated.

Breach of Covenant of Good Faith and Fair Dealing

The implied covenant of good faith and fair dealing requires each party to a contract to refrain from doing "anything which will injure the right of the other to receive the benefits of the agreement." (*Kransco v. American Empire Surplus Lines Ins.* Co. (2000) 23 Cal.4th 390, 400.) The implied covenant rests upon the existence of a specific contractual obligation and "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607.) Where there is no existing contract, there is no obligation to deal fairly or in good faith. (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032.)

Capital One argues that Plaintiff failed to state a cause of action for breach of the covenant of good faith and fair dealing because Plaintiff fails to identify any contract that exists between Plaintiff and Capital one, and that is a prerequisite for this type of claim. As the Complaint fails to allege any existing contract at all between the parties, the demurrer is **SUSTAINED** as to this cause of action.

Intentional Infliction of Emotional Distress

To plead a cause of action for intentional infliction of emotional distress, a plaintiff must allege that there is "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.)

In the Complaint, Plaintiff merely alleges that Capital One failed to release funds to her from Decedent's account for seven years until the Probate Court ordered Capital One to do so. Plaintiff does not allege any facts to support that this conduct was outrageous as a matter of law.

The demurrer is **SUSTAINED** as to this cause of action for failure to allege facts sufficient to show outrageous conduct on the part of Capital One.

Elder Abuse

As argued in the Demurrer, California's Welfare & Institutions Code section 15610.30 requires that the plaintiff is an elder of age 65 or older and was harmed by another person who "takes, secretes, appropriates, obtains, or retains real or personal property of the elder for a wrongful use or with intent to defraud or both" or assists another in doing so. The person doing the financial elder abuse must also know or should know that the conduct is likely to harm the elder. (Welf. & Inst. Code § 15610.30.)

Capital One argues that Plaintiff failed to allege that she is an "elder" over the age of 65 because she only alleged that she is over the age of 50. Capital One also argues that Plaintiff failed to allege in the Complaint that Capital One withheld funds for a wrongful use or intent to defraud, whereas the funds were withheld because there were charitable beneficiaries listed on the accounts. Capital One claims that it was willing to turn over the funds if Plaintiff presented a court order to release the funds.

The Court finds that Plaintiff failed to allege the elements necessary for a cause of action for elder abuse. The demurrer is **SUSTAINED** as to this cause of action.

CONCLUSION

Based on the foregoing, the demurrer is **SUSTAINED without leave to amend** because Plaintiff failed to state facts sufficient to allege the three causes of action, because the statute of limitations had run on each of the three claims, and because Plaintiff's claims are barred by res judicata and collateral estoppel. Capital One shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 24CV05294, Cohodes v. Cohodes

Plaintiff Marc Cohodes' ("Marc") unopposed motion to seal is **GRANTED** for the following items:

(1) Portions of the Complaint, filed on September 10, 2024:
- a. the first and second line of the caption page;
- b. the headings on page 2, line 7 and page 4, line 28;
- c. paragraphs 1-3, 5, 12-20, 22, 29-35; and
- d. page 8, paragraph d;

(2) Portions of this Memorandum of Points and Authorities in support of Marc Cohodes's motion to seal portions of the complaint ("Memorandum") (specifically, p. 1, lines 18-19, 23-28; p. 2, lines 1-6, 16-19, 26-27; p. 3, lines 3-4, 9-10);

(3) Paragraphs 3-4 of the Declaration of Leah Judge ("Judge Declaration"), filed in support of this motion;

(4) Exhibit A to the Judge Declaration;

(5) Exhibit B to the Judge Declaration; and

(6) Paragraph 2 of the Declaration of Marc Cohodes ("Marc Declaration"), filed in support of this motion.

PROCEDURAL HISTORY

Plaintiff Marc and Defendant Aurora were married. The parties entered into confidential agreements, the mentions of which Plaintiff now seeks to have sealed in the Complaint and moving papers for this motion per the terms of the parties' agreements. Plaintiff served by U.S. mail all the redacted and unredacted versions of the Complaint and moving papers to all parties in this motion on October 16, 2024. No opposition or objections have been filed.

ANALYSIS

Legal Standard

California Rules of Court ("C.R.C."), rules 2.550-2.551 allow the sealing and unsealing of records by court order.

Rule 2.550(c)-(e) set forth factors to consider with respect to sealing court records. The factors needed to seal records are that: (1) there is an overriding interest overcoming the right of public access; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that not sealing the record will prejudice the overriding interest; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. (C.R.C., rule 2.550(d).) An order to seal records must specifically state the facts supporting the findings and order sealed only those documents or pages that contain the material that should be sealed; if the records are voluminous, the court may appoint a referee. (C.R.C., rule 2.550(e).)

To file a seal a record under seal, rule 2.551(b) requires the requesting party to file a motion or application including a memorandum and declaration containing facts sufficient to justify the sealing. The requesting party must serve copies of the moving papers on all parties who have appeared in the case. (C.R.C., rule 2.551(b)(2).)

Moving Papers

Plaintiff Marc moves pursuant to rules 2.550 and 2.551 for an order sealing the following:

(1) Portions of the Complaint, filed on September 10, 2024:
- a. the first and second line of the caption page;
- b. the headings on page 2, line 7 and page 4, line 28;
- c. paragraphs 1-3, 5, 12-20, 22, 29-35; and
- d. page 8, paragraph d;

(2) Portions of this Memorandum of Points and Authorities in support of Marc Cohodes's motion to seal portions of the complaint ("Memorandum") (specifically, p. 1, lines 18-19, 23-28; p. 2, lines 1-6, 16-19, 26-27; p. 3, lines 3-4, 9-10);

(3) Paragraphs 3-4 of the Declaration of Leah Judge ("Judge Declaration"), filed in support of this motion;

(4) Exhibit A to the Judge Declaration;

(5) Exhibit B to the Judge Declaration; and

(6) Paragraph 2 of the Declaration of Marc Cohodes ("Marc Declaration"), filed in support of this motion.

The portions to be sealed are subject to the parties' confidential agreements. Plaintiff Marc argues he would be prejudiced if the terms of those agreements were disclosed because he is a short seller with more than 170,000 Twitter followers and has a history of criticizing fraudulent conduct by publicly traded companies, which has made him several enemies in the field. Plaintiff argues that public disclosure might lead to security issues for him. As the proposed sealing is narrowly tailored and there is no less restrictive means to achieve the overriding interest of maintain Plaintiff's confidentiality, Plaintiff requests the Court to grant his motion to seal.

Application

The Court finds that: (1) there is an overriding interest in protecting the confidential terms of the parties' agreements from public access; (2) this overriding interest supports sealing the record; (3) there is a substantial probability exists that not sealing the record will prejudice the overriding interest and potentially bring harm to Plaintiff Marc should the terms be disclosed; (4) the proposed sealing is narrowly tailored; and (5) there are no less restrictive means to achieve the overriding interest. As such, the Court will grant the unopposed motion to seal the portions described above.

CONCLUSION

The motion is **GRANTED**. The Plaintiff shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. 24CV05746, LVNV Funding LLC v. Godwin

Defendant Liat M. Pardini's motion to dismiss Plaintiff LVNV Funding LLC's Complaint with prejudice pursuant to Code of Civil Procedure section 337(b) is **DENIED**.

PROCEDURAL HISTORY

Plaintiff LVNV Funding LLC brought this limited action against Defendant alleging causes of action for account stated and open book account. (Complaint, ¶¶ 24-27.) Plaintiff purchased credit account under Citibank, N.A. (Complaint, ¶¶ 24-27.) The debtor on the credit account was "Liat M. Godwin", who is Defendant, and the given address was at Defendant's current address. (*Id*. at ¶ 6.) The debt balance at charge-off was $5,030.09, which Defendant failed, refused, and neglected to pay off. (*Id*. at ¶¶ 15-16.) Plaintiff filed the Complaint seeking the amount owed plus reasonable attorney's fees and costs.

ANALYSIS

Per Code of Civil Procedure section 337(b), an action to recover a book account must be brought within 4 years. In an action to recover a balance due on a book account of more than one item, the statute of limitation time period shall begin to run from the date of the last item. (C.C.P. § 337(b).)

Defendant moves to dismiss the Complaint arguing that the statute of limitations has passed for this type of claim. Code of Civil Procedure section 337(b) establishes a four-year statute of limitations for such actions. Defendant argues that the last payment was made around July 7, 2020, which is more than four years before the Complaint was filed on October 1, 2024, so the statute of limitations has passed.

Per the evidence, as of June 11, 2021, Defendant has a balance of $5,030.09 including accrued interest on the credit card. At charge-off, the debt balance remaining was $5,030.09 and Defendant has failed to make any payments on the account despite payment being demanded. The Court finds that the statute of limitations began to run from June 11, 2021, and that the action was filed within four years of that date.

CONCLUSION

Based on the foregoing, Defendant's unopposed motion to dismiss is **DENIED**. Defendant shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. 24CV06396, Luna Vineyards, LLC v. Third Leaf Trading Company, LLC

Petitioner Luna Vineyards, LLC's ("Petitioner") unopposed petition to confirm the arbitration award issued in its favor and against Respondent Third Leaf Trading Company, LLC ("Third Leaf") per Code of Civil Procedure ("C.C.P.") section 1285 is **GRANTED**. The Court orders as follows:

1. The final arbitration award is confirmed for $350,000.00 in attorneys' fees and $34,008.56 in costs;
2. In the Court's discretion, an additional $13,253.81 is awarded to counsel for fees and costs post-arbitration; and
3. Interest as requested in the amount of $4,626.00 will be awarded.

PROCEDURAL HISTORY

Third Leaf filed an arbitration demand against Petitioner on May 10, 2022, to enforce a written brokerage agreement made on October 30, 2020, and to recover $375,000.00 that Third Leaf alleged Petitioner owed. (Petition, 2:6-8.) The Hon. Scott Snowden served as the arbitrator and heard the matter on April 22 and 23, 2024. (*Id*. at 2:12-14.) On May 24, 2024, the arbitrator entered an interim award in favor of Petitioner, holding that Third Leaf did not meet its burden to prove that Petitioner breached the brokerage agreement. (*Id*. at 2:14-16.) The final arbitration

award ordered that Petitioner was entitled to $350,000.00 in attorneys' fees and $34,008.56 in costs. (Declaration of Riera, Exhibit C.)

ANALYSIS

Legal Standard

Per Code of Civil Procedure ("C.C.P.") section 1285, any party to an arbitration in which an award has been made may petition the court to confirm, correct, or vacate the award. The petition shall set forth the substance of or have attached a copy of the agreement to arbitrate, set forth the names of the arbitrators, and attach a copy of the arbitration award. (C.C.P. § 1285.4.) The petition much also set forth the grounds upon which relief requested is based. (C.C.P. § 1285.8.)

Where a court confirms, corrects, or vacates an award under this section, the court may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. (Cal. Bus. & Prof. Code § 6203(c).) Generally, the prevailing party is the one who obtains the judgment confirming, correcting, or vacating the award. (*Ibid.*)

Petition to Confirm Award

Petitioner requests the Court to confirm the final arbitration award, and also requests post-arbitration fees and costs for the total amount of $24,945.39. This includes $5,570.10 for August and September invoices, work-in-progress through October 17, 2024, in the amount of 10,227.00, and anticipated fees and costs of $10,825.00, less the JAMS refund of $1,676.71. Counsel requests an hourly rate of $795.00, which is the regular rate in Los Angeles where counsel is based.

Application

The Court will confirm the unopposed final arbitration award entered in the amount of $350,000.00 in attorneys' fees and $34,008.56 in costs. The Court will reduce Petitioner rates to the amounts reasonable in the local area. As Petitioner did not sufficiently show that Plaintiff attempted to find local counsel, but were unsuccessful, the Court will not award rates acceptable in the Los Angeles area. The Court will not award any fees anticipated for four hours of work in preparing a reply brief as no opposition or reply was filed. Fees will be awarded at a reduced rate of $500, which is an average local rate for an experience attorney in Sonoma County.

Accordingly, the Court will award attorney fees in the following amounts at a rate of $500.00 per hour: (1) $3,503.20 for the period of August 1 through September 30, 2024; (2) $6,430.82 for the work-in-progress through October 17, 2024; (3) $4,500 for 9 hours of work preparing the motion; (4) $1.50 costs incurred; (5) $435.00 fee of filing the petition; and (6) $60.00 fee for filing the notice of hearing. These fees and costs total $14,930.52, less the JAMS refund of $1,676.71, the Court will award a total of $13,253.81 to counsel for fees and costs post-

arbitration in its discretion. Furthermore, the Court will award interest as requested in the amount of $4,626.00.

CONCLUSION

Based on the foregoing, the Petition to Confirm the arbitration award is **GRANTED**. The following is ordered:

1. The final arbitration award is confirmed for $350,000.00 in attorneys' fees and $34,008.56 in costs;
2. Post-arbitration fees and costs are awarded in the amount of $13,253.81; and
3. Pre-judgment interest is awarded in the amount of $4,626.00.

Petitioner shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).