# REASONER, et al v HENDERSON, et al

# 24CV47538

# PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

This civil action stems from a dispute over real property and allegations of fraud and elder abuse brought by Donna S. Reasoner ("Donna") by and through her Agent-In-Fact George Reasoner and George Reasoner, individually ("George") (collectively "Plaintiffs") against Teran Henderson ("Henderson") and Elizabeth Cann ("Cann") (collectively "Defendants.") Plaintiffs bring causes of action for 1) fraud, 2) recission of contract, 3) cancellation of written instrument, 4) declaratory relief, 5) ejectment, 6) unjust enrichment, and 7) financial elder abuse.

On April 8, 2026, the Court postponed a hearing on Plaintiffs' motion for summary judgment in order to give Defendants time to file an opposition that was in compliance with Code of Civil Procedure section 473c and California Rules of Court 3.1350(f).)

On April 9, 2026, Defendants submitted a revised opposition. The revised opposition is still not compliant with the Rules of Court or Code of Civil Procedure. First, Defendants have filed their Memorandum in Opposition and Separate Statement as one singular document, rather than separate ones as contemplated by the rules. (Cal. Rule 3.1350(e)[opposition "must consist of four separate documents"].) Second, while Defendants partially complied with the requirement that there be a Separate Statement in a two-column format, they only responded to some of the Plaintiff's statements of undisputed fact. For instance, while Plaintiff's UMF on the Fraud cause of action contains thirty statements of undisputed fact, the Defendants' separate statement refers to only seven.

As Defendants have failed to file a separate statement in opposition to the motion, the Court "has discretion under [Code of Civil Procedure section 437c,] subdivision (b)(3) to grant the motion, without first undertaking a detailed analysis of the supporting evidence to determine if a prima facie showing has been made as to one or more of the elements of each claim . . . ," if the Court "reviews the moving papers and concludes the motion is not deficient on its face." (*Mandell-Brown v. Novo Nordisk Inc*. (2025) 109 Cal.App.5th 478, 484.) However, the Court may not grant the motion unless it first determines the moving party has met its initial burden of proof. (See T*hatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1086["[U]nless the moving party has met its initial burden of proof, the court does not have discretion under subdivision (b) of section 437c to grant summary judgment based on the opposing party's failure to file a proper separate statement"].)

## I. BACKGROUND

On March 8, 2023, Defendants presented Plaintiff with a written agreement for her to sign ("Agreement.") (UMF 1.) At the time of all material allegations, Plaintiff was over sixty-five (65) years of age. (UMF 46.) Defendants represented the Agreement as a rental or rent-to-own arrangement. (UMF 2.) Cann, Henderson and Donna read through the Agreement together, made changes, and then signed it. (UMF 3.) Cann typed up the Agreement to represent the changes made during discussions; however, Cann used online templates and "altered them for their purposes." (UMF 4,5.) The final Agreement was rushed and signed without final review by Donna because she had left to use the restroom. (UMF 7.) No changes were made to the Agreement after signing, and there were no witnesses or a notary present at the time of the signing. (UMF 8, 9.) There were also no attorneys present nor did any of the parties consult an attorney prior to signing the Agreement. (UMF 15.) Nor did Defendants ever advise Donna to obtain independent financial advice with regards to the Agreement. (UMF 35.)

The Agreement states that the deed transferred to defendants upon Donna' death. (UMF 10.) The Agreement further stated that the title transferred to Defendants upon activation of Donna's power of attorney. (UMF 11.) Cann testified that the transfer on death deed and the transfer of title provisions were intentionally included. (UMF 12.) Defendants read Donna the entire Agreement before signing. (UMF 16.) The Agreement was never recorded. (UMF 18.) The Agreement provides that the Defendants would pay only $90,000 over an eighteen-year period. (UMF 22.) However, the fair market value of the property was $300,000. (UMF 23.)

Under the Agreement, Donna is obligated to pay taxes, utilities, and insurance during the term of the Agreement. (UMF 24.) Prior to the singing of the Agreement, Cann and Henderson lived with Donna and provided her with care and assistance. (UMF 19, 20.)

## II. Legal Standard

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

A plaintiff moving for summary adjudication of a cause of action has an initial burden of proving each element of the cause of action entitling him or her to judgment on that cause of action, while a plaintiff moving for summary adjudication of an affirmative defense has an initial burden of proving that one or more elements of the defense cannot be established. (Code of Civ. Proc., § 437c, subd. (p)(1); *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241.) A plaintiff meets the burden of showing there is no defense by proving each element of the cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) A plaintiff moving for summary judgment is not required to disprove any defense asserted by the defendant in addition to proving each element of the plaintiff's own cause of action. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 853.) If the plaintiff meets it's burden, then the burden shifts to the defendant to

show the existence of a triable issue of material fact. (*Ibid*.) The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Id.* at 850.)

## III. Discussion

### A. Fraudulent Inducement

"The elements of fraud are (a) a misrepresentation (false representation, concealment, or nondisclosure); (b) scienter or knowledge of its falsity; (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage. Fraud in the inducement is a subset of the tort of fraud." *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 838-839.) Fraud in the inducement "occurs when ' "the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is voidable." ' " (*Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294-295 [citations omitted].)

It is undisputed that Plaintiff signed the Agreement. (UMF 7.) However, Plaintiff asserts that Defendants fraudulently characterized the Agreement as a Rent-To-Own ("RTO") lease instead of a transfer of title upon either Plaintiff' death or activation of a power of attorney ("POA".) (UMF 25.) Defendants do not respond to this UMF and do not seem to dispute this categorization that Plaintiff entered into the Agreement believing that it was in fact a Rent-To-Own Agreement and not one that would transfer the property upon her death or activation of the POA. Plaintiff's purported understanding of the Agreement, and her assertion that Defendants represented the Agreement as a lease or RTO is bolstered by the evidence provided. First, The Agreement itself refers to the payments as "rental payments" (Declaration of Darren Cordano ("Cordano Decl.") ¶ 3, Ex. 1, ¶ 3) and contemplates surrender of the property upon termination of the Agreement. (*Ibid*., ¶ 5.) The Agreement also repeatedly refers to it being a contract for an "option to purchase." (Agreement ¶¶ 8, 11.) Furthermore, the signature line reflects that Plaintiff was referred to as "seller/landlord." Finally, throughout his deposition, Henderson repeatedly referred to the Agreement as a "lease." (Henderson Depo. p. 9 (contract template was a "lease agreement"), p. 11, lines 11-13; p. 114, lines 2-10 [the template they selected was for a rent to own or lease to own agreement].)

However, Plaintiff does not provide undisputed evidence of justifiable reliance on that representation. Rather, she provides evidence that the Agreement was read to her in full and that she signed the Agreement (albeit rushed and without an attorney present). The Agreement clearly states that the property would transfer to the Defendants upon either Plaintiff's death or activation of the POA. (Agreement ¶ 6.) While Plaintiff may well have relied upon the Defendants' representations that this was a lease-to-own only, the terms of the Agreement state otherwise.

For purposes of a plaintiff bringing summary judgment, the Court must find that Plaintiff has provided undisputed evidence of all the elements of her cause of action. Plaintiff has not done so on her fraud claim and thus resolution of the matter on summary judgment is not warranted.

Accordingly, Plaintiff's **motion for summary judgment on the cause of action for fraudulent inducement is DENIED**.

### B. Recission of Contract

Plaintiff's Complaint seeks recission of the Agreement on the grounds that it was fraudulent, the result of undue influence, or mistake.

Pursuant to Code Civ. Procedure section 1689(b)(1), a party may rescind a contract where "the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party." To rescind a contract, the rescinding party must promptly upon discovering the facts that entitle him or her to rescission, give notice of rescission and restore to the other party everything of value, which he or she has received under the contract, or offer to restore said funds upon condition that the other party do the same. (Code Civ. Proc. §1691.) "When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both." (*Ibid*.)

Plaintiff's claim for recission based on undue influence is inextricably entwined with her claim for elder abuse (cause of action number seven) and provides context for examining the undue influence claims. Plaintiff has provided unrefuted evidence that she qualifies as an elder for purposes of the elder abuse statute. (Wef & Inst. Code §15600)

In the context of an elder abuse case, "undue influence" is defined as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (§ 15610.70, subd. (a).) "In determining whether a result was produced by undue influence, section 15610.70 directs courts to consider: (1) the victim's vulnerability; (2) the influencer's apparent authority; (3) the tactics used by the influencer; and (4) the inequity of the result." (*Keading v. Keading* (2021) 60 Cal.App.5th 1115, 1125.) Further, "[b]ecause perpetrators of undue influence rarely leave any direct evidence of their actions, plaintiffs typically rely on circumstantial evidence and the reasonable inferences drawn from that evidence to prove their case. (*Keading v. Keading* (2021) 60 Cal.App.5th 1115, 1125.)

Plaintiff has produced uncontroverted evidence that at the time the Agreement was entered into she was over sixty-five years of age. (UMF 46.) Plaintiff has also produced substantial evidence of vulnerability – which may be demonstrated by evidence of incapacity, illness, disability, age, isolation, or dependency (among other things). (Code Civ. Proc. §15610.70(a)(1).) Here, Plaintiff has shown her need for assistance in daily life and reliance on the Defendants at the time of the Agreement. Henderson and Cann lived with Plaintiff and performed daily tasks for her. (UMF19, 20.) Henderson testified at his deposition that he and his wife performed household chores and tasks for Plaintiff

every day and would do “whatever she need for that day.” (Declaration of Darren Cordano (“Cordano Decl.”) ¶ 7, Ex. 8 (Henderson Deposition).) These tasks included cleaning her house, her room and bathroom, garage and other things. (*Ibid*.) Henderson also testified that while Plaintiff was supposed to have an official caretaker, he and his wife were doing all the tasks that the caretaker was supposed to do for Plaintiff. (*Ibid* p. 16.) Caretaking duties performed by Defendants included changing Plaintiff’s diapers, cleaning up toileting accidents, washing and caring for Plaintiff’s hair and “anything she couldn’t necessarily do.” (*Ibid*; p. 17.) Cann testified at her deposition that she was listed as Plaintiff’s caretaker with the welfare program. (Cordano Decl., Ex. 5 p. 11, lines 4-5.) At the same time, Defendants were aware that Plaintiff’s son Bruce was deceased, suggesting awareness of potential isolation.

In opposition, Defendants argue that Plaintiff was familiar with legal documents and made the independent decision not to consult an attorney. (Response to UMF 15.) However, they do not present any evidence supporting the existence of questions of fact regarding her dependency, disability/illness, age, or reliance on Defendants. Nor do they produce evidence of her competency or independence. Thus, the Court finds Plaintiff has sufficiently established her vulnerability.

Plaintiff has also produced substantial evidence that Defendants had substantial influence over her and engaged in tactics that were one-sided and led to an unfair result. Defendants presented Plaintiff with the pre-drafted Agreement. (UMF 1.) The Agreement was created by Defendants using online templates and modifying them. (UMF 5.) The parties agree that Plaintiff signed the Agreement in a rush because she needed to use the restroom. (UMF 7.) There were no attorneys, impartial witnesses or notaries present at the signing. (UMF 9.) Defendants read the Agreement to Plaintiff aloud. (UMF 16.) Thus, Plaintiff has produced evidence showing one-sided tactics in drafting and reviewing the Agreement.

Plaintiff has also produced substantial evidence that the Agreement was on its face inequitable. Defendants would pay only $90,000 over a period of 18 years on a property that was valued in March 2023 at $300,000. (UMF 22, 23.) For the first three years, Defendants would only pay $100 per month. (Agreement, ¶ 1, II.) There would be no late fees or interest for any late payments. (*Id*. ¶3. )At the same time, Plaintiff was supposed to be responsible for all utilities, gas, electric, trash, internet and water. (*Id.* ¶ 4.) Finally, and most concerning, the Agreement would transfer the property – before all payments were made – in the event that Plaintiff died or activated her POA. However, the Defendants acknowledge that Plaintiff’s goal was to provide a lump sum (from the monthly payments) to her grandson Cayson. (Cann Depo p. 20, lines 19-21.) However, this objective would never be met if Plaintiff died or activated her POA before the purchase price was completed. Thus, the Plaintiff has produced substantial evidence of a one-sided Agreement with an inequitable result.

However, Defendants argue there are issues of material fact with regards to the nature of the Agreement formation and signing. They assert that Plaintiff was the instigator behind the Agreement and that she dictated the terms to them. (Responses to UMF 1, 2.) They assert that Plaintiff was allowed to review and revise the Agreement.

(Declaration of Elizabeth Cann ("Cann Decl.") ¶ 9; Cann Depo p. 22, lines 10-13.) They assert that the provisions regarding her death and POA were placed there by Plaintiff because she did not want George to try to take the property away from Defendants. (Cann Depo p. 27, lines 9-13.)

As regards the apparent inequitable nature of the Agreement, Defendants argue that Plaintiff intended the Agreement to be charitable in nature. They point to Plaintiff's long history of charitable donations as well as the nature of the relationship between Plaintiff and Defendants. According to Defendants, Plaintiff offered them a place to live with her (rent free) and then the option to purchase the home as a charitable gesture. (Cann Depo p. 16, lines 1-9; Henderson Depo. p. 33, lines 3-7.) They point to her history of making charitable gifts and argue that what might on the face appear inequitable was due to Plaintiff's generous nature – not because Defendants were taking advantage of her – but this again leaves unanswered how her "charitable" nature toward her grandson was to come to fruition.

The Court finds that Defendants have raised questions of material fact with regards to whether they exerted undue influence over Plaintiff such that it warrants recission of the contract. Accordingly, **the motion for summary judgment as to the recission claim is DENIED**.

Because the Court finds that questions of material fact remain regarding the formation and intention behind the Agreement, as well as whether Plaintiff was the victim of elder abuse/undue influence, the remainder of Plaintiff's causes of action are also not suitable for summary judgment.

**Accordingly, as issues of material fact remain, the motion for summary judgment is DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to submit formal Orders complying with Rule 3.1312 in conformity with this Ruling.

# UNIVERSITY CREDIT UNION v BERRY

# 25CF15100

# PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION/ PLAINTIFF'S MOTION TO STRIKE CROSS-COMPLAINT

This case involves the alleged breach of a solar loan entered into between University Credit Union ("Plaintiff") and Yvonne L. Berry, individually and as a Trustee of the Yvonne L. Berry Trust ("Defendants.")

Now before the Court is a motion to strike that Defendants' Cross-Complaint and Plaintiff's motion for summary judgment. Both motions are unopposed.

As an initial matter, the motion to strike does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the**

**court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]

Failure to include this language In the notice may be a basis for the Court to deny the motion.

The Court points out this procedural deficiency but in the interest of judicial efficiency will rule on the merits of the motion.

## I. Background

On August 17, 2021, Defendants entered into a written loan agreement with Plaintiff for the sum of $35,861.54 at 2.733 % per annum interest. (UMF 1.) Plaintiff performed under the contract. (UMF 2.) The last payment Defendants made was on December 3, 2024. (UMF 5.) There remains a balance of $34,469.90 on the loan. (UMF 4.)

Defendant has denied the allegations and has asserted the defense that the signature on the Agreement is not hers and was fraudulently obtained. (Answer ¶ 9.)

## II. Legal Standard and Discussion

### A. Motion to Strike

A motion to strike lies either to strike: (1) any "irrelevant, false or improper matter inserted in any pleading"; or (2) any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

Plaintiff moves to strike the Cross-Complaint on the grounds that because it was filed well after the Answer, Defendants were required to seek Court approval before filing any cross-complaint in this matter. (Code Civ. Proc. §426.30(a).)

Defendants did not seek prior approval before filing the Cross-Complaint. Accordingly, **the motion to strike is GRANTED, without prejudice for Defendant to seek leave to file a new Cross-Complaint.**

### B. Summary Judgment

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

A plaintiff may move for summary judgment when the plaintiff contends there is no defense to the cause of action. (Code Civ. Proc., § 437c, subd. (a).) A plaintiff meets the burden of showing there is no defense by proving each element of the cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) A plaintiff moving for summary judgment is not required to disprove any defense asserted by the defendant in addition to proving each element of the plaintiff's own cause of action. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 853.) If the plaintiff meets it's burden, then the burden shifts to the defendant to show the existence of a triable issue of material fact. (*Ibid*.) The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Id.* at 850.)

Plaintiff seeks summary judgment on its breach of contract claim. The elements of a cause of action for breach of contract are: (1) existence of a contract; (2) plaintiff's performance of its obligations under the contract or excuse for nonperformance; (3) defendant's breach of the contract; and (4) resulting damages proximately caused by defendant's breach. *(Reichert v. Gen. Ins. Co.* (1968) 68 Cal.2d 822, 830.)

Plaintiff has demonstrated sufficient evidence in support of its cause of action, and the burden is now upon Defendants to show the existence of a triable issue of material fact. Although Defendants have not filed an opposition to the motion for summary judgment, both the purported Cross-Complaint and the Answer indicate that Defendants are trying to raise various affirmative defenses to the Complaint. The Court is cognizant of the Defendants' pro se status and the "strong public policy favoring disposition on the merits." (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.)

**Accordingly, the Court will continue the matter to July 10, 2026. Defendants have until 3:00pm on June 12, 2026, to file any opposition (including a proper response to the separate statement of facts pursuant to Cal. Rule of Court 3.1350). Plaintiff has until 3:00pm on June 26, 2026, to file a reply.**

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling on the Motion to Strike.

# BROCK v CALAVERAS COUNTY WATER DISTRICT

# 25CV47849

# PLAINTIFFS COUNSEL'S MOTIONS TO BE RELIEVED

Gregory P. Wayland, Esq and Corsaut & Wayland, LLP seek to be relieved as counsel of record for Plaintiffs Jerry D. Brock and Dorris G. Brock ("Plaintiffs").

The Court has discretion to allow an attorney to withdraw, and such a motion should be granted provided that there is no prejudice to the client and it does not disrupt the orderly process of justice. (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915.) California Rules of Court, rule 3.1362 requires (1) a notice of motion and motion directed to the client (Civil Form MC-0510); (2) a declaration stating in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure § 284(2) is brought instead of filing a consent under section 284(1) (Civil form (MC052)); (3) service of the notice of motion and motion, the declaration, and the proposed order on the client and on all other parties who have appeared in the case; and (4) a proposed order relieving counsel (Civil form (MC-053)). The Court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court. (Cal. Rules Court, rule 3.1362(e).)

Attorney Gregory P. Wayland ("Wayland") advises that his clients, Plaintiffs are in breach their agreement for legal services and that the relationship between counsel and clients means that he is unable to provide effective counsel. Wayland has informed Plaintiffs of his intention to withdraw as counsel via email and has served the instant motion at Plaintiffs' address with return receipt requested. Wayland has confirmed the Plaintiffs' address using title records and has also attempted to phone the Plaintiffs but he has been unable to reach them or to leave a voicemail.

Counsel's Declarations comply with the statutory requirements. Therefore, the Motions to be Relieved are **GRANTED**. However, Counsel did not file the mandatory proposed order on Civil Form MC-053 with all hearing dates currently scheduled in this matter. Accordingly moving counsel is ordered to file the appropriate order within five (5) days of this ruling. The Court will delay the effective date of the order until proof of service of a copy of the signed order on Plaintiff has been filed with the Court.

The clerk shall provide notice of this ruling to the parties forthwith. Counsel to submit formal Orders in conformity with this Ruling within five (5) days.

## 10:00 a.m. Calendar

# MATTER OF PRESTON

# 20PR8275

# PLAINTIFF'S MOTION TO COMPEL DEPONENT TO APPEAR

Now before the Court is a Motion to Compel Deposition of attorney Claudia Y. Shafer ("Shafer") brought by Petitioner Chad Preston, Successor Administrator ("Petitioner.") Petitioner is represented by attorney Carrie M. McKernan. ("McKernan").

## I. Relevant Background

Shafer was the former counsel for the Estate of Gregg Hall Preston ("Estate") and the Estate's former administrator Scott Preston. On February 13, 2025, Shafer was removed by this Court via Minute Order, as counsel from the Estate, along with Scott as the administrator; however, she remained as counsel for Scott Preston until the Court granted her motion to be relieved on October 13, 2025. Shafer is not a party to this action.

On February 10, 2026, Shafer appeared for an in-person deposition at the McKernan law firm offices. (Declaration of Carrie M. McKernan ("McKernan Decl.") ¶ 3.) Shafer participated in the deposition for approximately one hour before she abruptly terminated the deposition and left. (*Ibid.*) Prior to her abrupt termination and exit, Shafer stipulated on the record to return on Wednesday, February 25, 2026, from 9:00 a.m. to 12:00 p.m. (*Ibid*.) Shafer started the deposition without making any objections, other than to question the length of the deposition and to assert her need to leave early in order to take medications. (*Ibid*., Ex. B.)

On February 11, 2026, McKernan's office served Shafer, by email, with a Notice of Taking Deposition (Part Two) formalizing the agreed date of February 25, 2026, at 9:00 a.m., and updated Requests for Production Nos. 10-11. (McKernan Decl. ¶11, Ex. C.) On the morning of the deposition, McKernan's office sent a reminder to Shafer about the deposition and Requests for Production. (*Id.* ¶ 4, Ex. D.) On the afternoon of February 23, 2026 (two days before the deposition was scheduled), Shafer emailed McKernan's office stating that there was no legal authority to depose her and she would not appear at the deposition, nor produce the documents, absent a court order. (*Id* ¶ 5, Ex. E.) Shafer did not appear for the deposition and her absence was noted on the record. (*Id.* ¶ 6.)

Between March 23, 2026, and April 3, 2026, McKernan made multiple attempts to engage in meet and confer efforts. (McKernan Decl. ¶¶7, 8.) Shafer failed to answer the phone call at an agreed-upon time and further failed to respond to six additional phone calls. (*Ibid*.)

## II. Legal Standard and Discussion

Pursuant to Code Civ. Procedure section 2020.010, a party may take the oral or written deposition of a non-party and may seek the production of business records. If, after service of a deposition notice, a deponent fails to appear or to proceed, the noticing party may move for an order compelling attendance, testimony, and production. (Id., § 2025.450(a).) The motion shall set forth specific facts showing good cause justifying the production for inspection of any documents described in the notice. (*Id.* subd (b)(1).) A party who objects to the notice of deposition must serve written objections at least three (3) calendar days before the scheduled deposition. (Code Civ. Proc. § 2025.410(a).)

Here, Shafer agreed to attend a deposition and did in fact participate in approximately one hour of the deposition. She did not make any objection to participation in that deposition and on the record agreed to participate in a second deposition. However, only two days before the noticed deposition, Shafer sent an email stating only: "Based upon my research you do not have the legal authority to depose me given the facts of this case." (McKernan Decl. ¶ 5, Ex. E.) Shafer did not move to quash the deposition notice and did not move for a protective order.

"In the absence of privilege, the right to discovery in this state is a broad one, to be construed liberally so that parties may ascertain the strength of their case and at trial the truth may be determined." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 538.) Shafer opposes the motion to compel on the grounds that deposing opposing counsel is highly irregular and may only be compelled upon a showing of the elements of a three-prong test as articulated in *Carehouse Convalescent Hospital v. Superior Court* (2006) 143 Cal.App.4th 1558, 1563.)[1] Petitioner did not file a response addressing this argument.

Regardless of the propriety of taking an attorney's deposition, Shafer's response was inadequate. Shafer did not provide a single specific written objection to the deposition notice other than a blanket refusal that was untimely. Shafer has not moved to quash the notice (which likely would also be untimely as she appeared based on the original notice and the notice for the agreed-upon resumption date appears more in the nature of a courtesy than a requirement), nor has she moved the Court for a protective order. However, even though Shafer has not sought a protective order, the Court and the parties must be cognizant of the fact that Shafer's deposition may implicate the attorney-client privilege. While Shafer, in attending the first part of the deposition without objection, may have waived some of her own objections, she cannot waive the attorney-client privilege. That privilege belongs to the client alone. (*HLC Properties, Ltd v. Superior Court* (2005) 35 Cal.4th 54, 62.)

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[1] *Carehouse* was addressing the deposition of the active opposing counsel – not the deposition of a former opposing counsel. Thus, much of *Carehouse*'s rationale behind avoiding such depositions is inapplicable in this case.

The motion to compel the deposition is granted, subject to the limitation of the attorney-client privilege to be asserted as appropriate on a question-by-question basis at the resumed deposition.

The motion to compel the production documents, however, is denied without prejudice. Any motion to compel the production of documents as part of a deposition must "set forth specific facts showing good cause justifying the production for inspection of any documents described in the notice." (Code Civ. Proc. § 2025.450(b)(1).) The motion to compel does not provide any information about the requested documents, nor any good cause for production of those documents.

Petitioner seeks sanctions but does not specify the amount sought.

The Court may impose sanctions for the failure to respond to discovery requests as a misuse of the discovery process. (Code Civ. Proc. § 2023.030(a).) The Court must impose sanctions on Shafer's failure to engage in the meet and confer process. (Code Civ. Proc. § 2023.020.)

Accordingly, the Court grants sanctions in the amount of $1000.00.

## III. Conclusion

**The motion to compel deposition is granted; Claudia Scaffer must appear for the resumption/conclusion of her deposition within fifteen (15) calendar days of this Ruling. The motion to compel production of documents is denied, without prejudice, to refile with the necessary detail, if documents are not sufficiently produced at the resumed deposition. Sanctions in the amount of $1,000.00 are imposed on Claudia Schaffer personally, to be paid to petitioner, by and through counsel, within fifteen (15) calendar days of this Ruling.**

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted Proposed Order.