POKER FLATS POA v ESTRADA, et al

22CV45807

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AND FOR JUDGMENT AGAINST DEFENDANT

This case involves a breach of contract dispute. Now before the Court is a motion to enforce a settlement agreement filed by Plaintiff Poker Flat Property Owners Association, Inc.

The Motion 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 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system.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.**

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

Accordingly, the motion is **DENIED** without prejudice to refile.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

POKER FLATS POA v ROLON

22CV46309

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

This case involves a breach of contract dispute. Now before the Court is a motion to enforce a settlement agreement filed by Plaintiff Poker Flat Property Owners Association, Inc.

The Motion 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.**

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

Accordingly, the motion is **DENIED** without prejudice to refile.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

HAMPTON v EAST BAY MUNICIPAL UTILITY DISTRICT, et al

22CV46329

DEFENDANT URBAN PARK'S MOTION FOR BIFURCATION OF LIABILITY

This matter involves personal injuries sustained by Plaintiff Maxwell Hampton ("Plaintiff") while swimming in Lake Comanche. Plaintiff generally alleges that while recreating along the south shore of the Camanche Dam and Reservoir ("Reservoir"), near the Arrowhead campground, he dove into the water from a rock wall and struck a submerged boulder, resulting in quadriplegia. Defendant East Bay Municipal Utility District ("EBMUD") owns and maintains the Reservoir. Defendant Urban Park Concessionaires ("UPC") has a contractual relationship with EBMUD to provide hospitality and resort management services at the Reservoir.

Now before the Court is UPC's motion to bifurcate.

I. Factual Background

The facts of this matter have been laid out in the Court's previous rulings in this case. In brief, this case arises from an accident that occurred on July 27, 2019. At that time, Plaintiff alleges that while recreating along the south shore of Lake Camanche, near the Arrowhead campground, he dove into the water from rock wall and struck submerged boulder, resulting in quadriplegia.

Various issues of material fact remain in contention. However, at the heart of the case and relevant to the instant motion, are questions as to UPC's role in placing the boulder in the water and maintaining the area, whether the boulder was open and obvious, and the degree of risk assumed by the Plaintiff.

II. Legal Standard and Discussion

Code Civ. Procedure section 598 provides, in relevant part:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order…that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case…

Under Code Civ. Proc. section 1048(b), the Court, "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action . . . or of any separate issue or of any number of causes of action or issues."

Trial courts have broad discretion to determine whether to bifurcate in the interests of judicial economy. (*Grappo v. Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 504.) The objective of bifurcation "is avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff." (*Trickey v. Superior Court of Sacramento County* (1967) 252 Cal.App.2d.650, 653.)

III. DISCUSSION

Pursuant to CCP §§598 and 1048, UPC requests that the Court bifurcate the trial, with trial on the issue of liability separated from and preceding the trial on damages. UPC argues that bifurcation would promote judicial economy and efficiency of handling the litigation, serve the ends of justice, aid the convenience of witnesses, and potentially facilitate settlement. UPC asserts that its liability is "vigorously contested in this matter" and that it disputes liability on the grounds that either Plaintiff assumed the risk or was comparatively at fault. UPC argues that it will be unduly prejudiced, and the court's time will be wasted, by allowing the introduction of substantial damages testimony before liability is determined.

In opposition, Plaintiff argues that bifurcation is improper in this case. Plaintiff points to the Court having already held that there is a triable issue of fact as to whether Plaintiff assumed the risk or whether there is comparative fault. Further, Plaintiff contends, bifurcation will result in inconvenience to witnesses and duplication of testimony. Plaintiff also asserts that the cause of his injuries is intertwined with liability and would result in duplicate testimony.

In reply, UPC reiterates its arguments and asserts that there is limited overlap between the witnesses that will be called for liability versus damages. However, also in reply, UPC acknowledges that there are at least ten (if not more) witnesses that will need to testify at both the liability phase and the damage phase. Plaintiff suggests that there are closer to eighteen overlapping witnesses, with a potential for at least six more witnesses who have yet to be deposed. (Declaration of David L. Winnett ("Winnett Decl.") ¶¶ 2, 4.)

UPC, as the moving party, bears the burden of showing that bifurcation is necessary and appropriate. (*Spectra-Physics Lasers, Inc. v. Uniphase* Corp. (N.D. Cal. 1992) 144 F.R.D. 99, 101; see also *Altangerel v. Martinez*, 2021 Cal.Super.LEXIS 77925, *3.) UPC has failed to do so here because it has not established that judicial economy will be served by bifurcation, nor that a joint trial will unduly prejudice UPC or that a bifurcated trial will not unduly prejudice Plaintiff.

California courts have recognized that bifurcation is proper where liability is a simple matter while damages require testimony from multiple witnesses, or where only a small fraction of the evidence would be repeated, and the trial court had determined the ends of justice would be served by bifurcation. (*Altangerel*, supra [citing *Trickey*, supra at 653].)

Here the question of liability is not simple and in fact has been the subject of multiple motions before this Court. There are multiple overlapping witnesses to both the liability issue and the issue of damages and there is likely to be significant overlap in witness testimony. UPC has not carried its burden to show that calling two separate trials, with two different juries, that will inconvenience multiple witnesses is not a good use of judicial resources. The Court recognizes that UPC is hesitant to allow testimony related to the severity of Plaintiff's injuries because it is possible that a jury would be prejudiced in Plaintiff's favor based on sympathy. However, any potential prejudice can be mitigated at trial with a jury instruction that the jurors are not to be swayed by sympathy or feelings. (*People v. Lanphear* (1984) 36 Cal.3d 163, 165.)

The Court finds that bifurcation of trial in two phases would not promote the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the trial. Accordingly, the motion is **DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling.

NELSON v BROWN, et al

25CV47918

DEFENDANT'S MOTION TO SET ASIDE DEFAULT

This is an action arising out of the alleged theft of the personal property of Plaintiff Curtis P. Nelson ("Plaintiff") by Defendants Grant F. Brown ("Brown") and Michael J. Cooley ("Cooley.")

Now before the Court is Defendant Brown's Motion to Set Aside Default.

I. RELEVANT PROCEDURAL HISTORY

On February 28, 2025, Plaintiff filed a complaint against Defendants. Plaintiff filed a proof of service showing that Brown had been personally served on April 21, 2025. On June 30, 2025, the Court entered a judgment after default awarding Plaintiff a total judgment of $22,050.00.

Brown filed his motion for relief from default on July 2, 2025.

II. Legal Standard and Analysis

Code Civil Procedure section 473(d) authorizes the Court to vacate a judgment that is void while section 473(b) permits the Court to set aside a judgment entered because of mistake, inadvertence, surprise, or excusable neglect. Because courts favor resolution on the merits, "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479 [citation omitted].)

Brown moves for relief on two grounds. First, Brown states that his co-Defendant was shot in the face and has been hospitalized; however, it is unclear if Mr. Brown was also injured and hospitalized raising questions as to whether this is an appropriate basis for relief. Brown also states that he believed that he could provide a response to the Complaint at the Case Management Conference on July 2, 2025, and did not realize he needed to Answer before that.

Defendant, who is representing himself *pro se*, did not wait an inordinate amount of time to seek relief from default. Instead, he filed his motion only a few days after the default was entered.

"The law favors judgments based on the merits, not procedural missteps. Our Supreme court has repeatedly reminded us that in this area doubts must be resolved in favor of relief, with an order denying relief scrutinized more carefully than an order granting it." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134.) Further, courts do not tend to reward gamesmanship. (*Solorzano v. Koutures* (2021) 2021 Cal. Super LEXIS 116272 [relief from default is almost routinely given at early stages of proceedings, and going through the process of filing for default "increases the costs of litigation and wastes precious judicial resources and smacks of gamesmanship."].)

Given Brown's assertion that his co-Defendant was seriously injured, that he believed he could respond at the July 2, 2025, CMC, and that he took immediate steps to seek relief from judgment, the Court finds Brown has presented substantial justification for setting aside the default.

For the foregoing reasons, Brown's motion to vacate default judgment is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Brown to prepare a formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling. Defendant Brown is to file an Answer by 3:00 p.m. on September 12, 2025.

GREENROOT v WEBSTER, et al

25CV48032

DEFENDANT WEBSTER'S DEMURRER, MOTION TO STRIKE, and MOTIONS TO COMPEL

This case involves a contract dispute concerning real property brought by Lorna Greenroot ("Plaintiff") against Pennelope Webster ("Pennelope"), Randy Webster ("Randy") (collectively "Websters") and Gregory Stanley ("Stanley.") Now before the Court are a demurrer and motion to strike brought by the Websters, as well as motions to compel discovery responses.

The demurrer and motion to strike appear to be based on the Third Amended Complaint which was attached as an exhibit to the Plaintiff's motion for leave to file an amended complaint ("Exhibit TAC.") The Exhibit TAC does not match the TAC filed by the Plaintiff, because while it contains the same causes of action, the filed TAC lacks all factual allegations set forth in the Exhibit TAC. In the interests of judicial economy, the Court will consider the substantive merits of the demurrer and motion to strike as to the Exhibit TAC. (For the remainder of this ruling, "TAC" will be used to refer to the Exhibit TAC.)

Plaintiff did not file any opposition to the motions.

I. Background

Plaintiff filed her original complaint on April 30, 2025, against Webster, alleging causes of action for: 1) quiet title, 2) breach of contract, and 3) unjust enrichment. Before Defendant filed an Answer, Plaintiff filed a First Amended Complaint ("FAC") against Webster which removed the cause of action for unjust enrichment.

On May 20, 2025, Webster filed a Cross-Complaint for 1) breach of lease agreement, 2) breach of lease to own agreement, 3) declaratory relief, 4) slander of title, 5) elder abuse, and 6) ejectment.

On May 22, 2025, Plaintiff sought leave to file a Second Amended Complaint against Webster in order to clarify her own theories of relief and rebut Webster's allegations in the cross-complaint. Webster had offered to stipulate to this amendment but Plaintiff did not respond to such stipulation. (Defendant's notice of non-opposition.)

This motion was denied as moot because on May 30, 2025, Plaintiff filed a motion for leave to file her TAC. On July 11, 2025, the Court granted Plaintiff's motion to amend. The TAC adds Randy Webster as a new defendant as well as to add causes of action for fraud, conspiracy, of title, and intentional infliction of emotional distress.

II. Legal Standard

A. Demurrer

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I.Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co.,* 148 Cal. App. 4th 100, 111.) In considering the demurrer, the court must accept the allegations set forth in the complaint as true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 (citations omitted).) Such a demurrer should be "granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (Morris v. JPMorgan Chase Bank, N.A. (2022) 78 Cal.App.5th 279, 292 (citations omitted).) Finally, "it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (Hale v. Sharp Healthcare (2010) 183 Cal.App.4th 1373, 1379.

B. 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.)

When bringing a motion to strike, the moving party is obligated to attempt to meet and confer with the opposing side prior to bringing the motion. (Code Civ. Proc. § 435.5(a)(I).) The moving party must also file a declaration setting forth their attempts at meet and confer. (*Id*. sub (a)(3).) However, the failure to do so is not grounds for granting or denying the motion. (*Id.* sub (a)(4).)

III. Discussion

A. Demurrer

1. Quiet Title

The elements of an action to quiet title are: 1) the plaintiff is the owner and in possession of the land and 2) the defendant claims an interest therein adverse to the plaintiff. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740.) Code of Civil Procedure section 761.020 requires that a verified complaint to quiet title include: (1) a description of the subject property; (2) the plaintiff's title and basis for it; (3) the adverse claims to plaintiff's title; (4) the date as of which determination is sought; and (5) a prayer for the determination of title against the adverse claims. (Code Civ. Proc., § 761.020.)

The TAC is not artfully drafted, but it is not so incomprehensible as to be uncertain. However, a full reading of the verified TAC shows that Plaintiff has not set forth sufficient allegations to state a claim for quiet title. Specifically, while Plaintiff alleges that she is the real title holder of the Property (identified by address and legal description) and alleges that there are claims made against the Property by Defendants, Plaintiff does not allege the "date as of which determination is sought." As such, Plaintiff has not set forth the allegations required in a verified complaint to quiet title.[1]

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[1] Defendants take issue with the fact that Plaintiff's TAC alleges full ownership of the Property but her previous verified complaints only alleged 50% ownership. While this may be true, a plaintiff is allowed to seek quiet title to only a portion of a property. (*Gonzales v. Gonzales* (1968) 267 Cal.App.2d 428.)

Accordingly, Defendants' demurrer as to quiet title is **SUSTAINED**, with 15 calendar days leave to amend.

2. Breach of Contract

A breach of contract claim requires: 1) the existence of a contract, 2) plaintiff's performance or excuse for nonperformance, 3) defendant's breach, and 4) the resulting damages to the plaintiff. (*San Mateo Union High Sch. Dist. v. Cnty. of San Mateo*, (2013) 213 Cal. App. 4th 418, 439.)

Plaintiff alleges that Plaintiff and Defendant(s) entered into a lease-to-own agreement, that she fully performed, and that Defendants breached the agreement by failing to transfer title to Plaintiff. However, Plaintiff does not expressly allege that she was damaged or how she was damaged. Thus she fails to state a claim for breach of contract.

Accordingly, the demurrer as to the cause of action for breach of contract is **SUSTAINED**, with 15 calendar days leave to amend. (*See also* Code Civ. Proc. §430.10(g) [a demurrer may be sustained where it is unclear from the pleading whether the contract is alleged to be written, oral, or implied by conduct].)

3. Fraud

The elements that must be plead to state a cause of action for fraud are (1) a misrepresentation as to a material fact, (2) knowledge of falsity, (3) intent to defraud, (4) justifiable reliance, and (5) resulting damage. (*Aspiras v. Wells Fargo Bank* (2013) 219 Cal.App.4th 948, 957.) "Fraud must be pleaded with particularity. General and conclusory allegations are inadequate." (*Lauckhart v. El Macero Homeowners Assn.* (2023) 92 Cal.App.5th 889, 903.)

The TAC states:

> Defendants made false representations with intent to deceive Plaintiff into continuing to pay money and include Stanley in title under coercion. Plaintiff relied on those representations and suffered damages exceeding $300,000. Defendants acted with malice, fraud, and oppression.

Plaintiff fails to state a single factual allegation related to the alleged fraud, let alone to do so with sufficient particularity. It does not state who made the statement, nor the content of any supposed misrepresentations or statements.(*Laukhart*, supra at 904.)

Accordingly, the demurrer as to the cause of action for fraud is **SUSTAINED**, with 15 calendar days leave to amend.

4. Collusion/Conspiracy

The essential elements of a claim for civil conspiracy are (1) the formation and operation conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages. (*AREI II Cases*, 216 Cal.App.4th 1004, 1022.) Further, the complaint " 'must show that each member of the conspiracy acted in concert and came to a mutual understanding to accomplish a common and unlawful plan, and that one or more of them committed an overt act to further it.' [citation]."") (*Ibid*.)

The TAC states: "Defendants conspired to deprive Plaintiff of her interest in the Property and to effect a fraudulent transfer to Stanley."

As with fraud, conspiracy claims must be pled with particularity. (*AREI II Cases*, supra at 1022.) Bare allegations are insufficient.

Here, the TAC is utterly devoid of sufficient factual allegations of the elements of a conspiracy claim. Accordingly, the demurrer is **SUSTAINED** as to the conspiracy/collusion claims, with 15 calendar days leave to amend.

5. Unjust Enrichment (Fifth Cause of Action) and Restitution (Seventh Cause of Action)

" The elements of an unjust enrichment claim are 'the receipt of a benefit and [the] unjust retention of the benefit at the expense of another.'" (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593 [citation omitted].) However, the mere fact that a person benefits another does not necessarily support a claim for unjust enrichment. (*Ibid.)* Unjust enrichment and restitution are essentially the same thing, and there is no independent cause of action for restitution. (*Munoz v. MacMillan* (2011) 195 Cal.App.4th 548, 661.)[2]

The TAC states that "Defendants were unjustly enriched by payments, improvements, and Plaintiff's business on the Property" and that it would be inequitable to allow them to retain those payments. Plaintiff also alleges that she paid over $300,000 toward the purchase of the Property but that the Property was not transferred to her. She also alleges that she made improvements on the Property.

While certainly barebones, the allegations of unjust enrichment are sufficient to state a claim.

The demurrer as to the claim for unjust enrichment is **OVERRULED**. The demurrer to the cause of action for restitution is **SUSTAINED, without** leave to amend.

6. Slander of Title

"Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a false statement that disparages title to property and causes the owner thereof " 'some special pecuniary loss or damage.'" (*Sumner Hill Homewoners' Assn., Inc. v. Rio Mesa Holdings* (2012) 205 Cal.App.4th 999, 1030.) An essential element of slander of title is malice. (*Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263.)

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[2] California courts are split as to whether unjust enrichment constitutes a separate cause of action, or whether it is simply a remedy like restitution. (*O'Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App.5th 771, 791.)

The TAC states only:

> Defendant made false statements regarding Plaintiff's ownership interest.
>
> These statements have harmed Plaintiff's ability to secure her rights and damaged her business.

These bare allegations fail to state a claim for slander of title. Accordingly, the demurrer as to the cause of action for slander of title is **SUSTAINED**, with 15 calendar days leave to amend.

7. Elder Abuse

Plaintiff alleges that Defendants committed elder abuse against Pennelope Webster, not against herself. Plaintiff does not have standing to bring an elder abuse claim on behalf of someone else. (*Ring v. Harmon* (2021), 72 Cal.App.5th 844, 851 ["an elder can bring an elder abuse claim on his or her own behalf, as can someone acting as the elder's representative (not the estate's).")

Plaintiff does not allege that she is an elder nor that she was abused. She does not allege that she is the representative of Pennelope. The Court does not believe there is any way for Plaintiff to amend her complaint to assert this cause of action.

Accordingly, the demurrer to the cause of action for elder abuse is **SUSTAINED, without** leave to amend.

8. Declaratory Relief

Pursuant to Code Civil Procedure section 1060:

> Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property. . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties,

> bring an original action or cross-complaint in the superior court for a declaration of his or her rights.

Defendants assert that Plaintiff cannot seek declaratory relief because she is already pursuing a cause of action for breach of contract. A court *may*, but is not obligated, to sustain a demurrer on a claim for declaratory judgment where there is an accrued breach of contract cause of action. (*Ossesous Technologies of America v, DiscoveryOrtho Partners, LLC* (2010) 191 Cal.App.4" 357, 366.) However, as there are disputes about the existence or terms of the contract in this case, and Plaintiff has sufficiently alleged that she is seeking to establish her rights and duties to the Property, she has sufficiently and appropriately stated a claim for declaratory relief.

The demurrer as to the cause of action for declaratory relief is **OVERRULED**.

9. Constructive Trust

> A constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that res; and (3) some *wrongful* acquisition or detention of the res by another party who is not entitled to it. [citation]. (*Burlesci v. Petersen* (1975) 51 Cal.App.3d 590, 600.)

A constructive trust " may be imposed in practically any case where there is a wrongful acquisition or detention of property to which another is entitled.'" (*Ibid* [citation omitted].)

Although Plaintiff asserts this cause of action as against all Defendants, the only Defendant that is alleged to actually be retaining the Property is Pennelope Webster. Accordingly, as to the other Defendants, there can be no claim for constructive trust. As to Pennelope, the TAC fails to state how Pennelope is wrongfully detaining the Property.

The demurrer as to the claim for constructive trust is **SUSTAINED**, with 15 calendar days leave to amend.

(The Court recognizes that Plaintiff has already made multiple attempts to amend her complaint, resulting in substantial additional work for both the court and Defendants. Plaintiff is placed on notice that the Court will likely deny allowing Plaintiff to make any future amendments beyond those specifically allowed in the above rulings.).

B. Motion to Strike

Defendants move to strike references to "malice, fraud, and oppression" in the third (fraud) and eighth (elder abuse) causes of action. Defendants also move to strike the request for relief for attorney's fees and punitive damages.

The Court has already sustained the demurrer, without leave to amend, on the elder abuse cause of action. Thus the motion to strike as to that cause of action is **DENIED** as moot.

As to the claim for attorney's fees, the Court **GRANTS** the motion to strike because Plaintiff has not cited to any contract provision or statutory provision that would allow her to seek attorney's fees.

Punitive damages are recoverable where a plaintiff proves "by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294.) Relevant to this case, "malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of rights or safety of others. (*Ibid*.) "Oppression" means conduct that subjects a person to "cruel and unjust hardship in conscious disregard of that persons' rights." (Civ. Code. §3294(c)(2).)

The proper standard for a motion to strike punitive damages is whether plaintiff has alleged "ultimate facts" showing an entitlement to exemplary damages. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) The TAC's allegations have simply pleaded a claim for punitive damages in the language of the statute authorizing punitive damages. While this is not objectionable when sufficient facts are alleged to support the allegation, here the FAC lacks ultimate facts showing a punitive damages claim. (*See Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6 [citation omitted].)

Moving Defendants' motion to strike reference to punitive damages is **GRANTED**.

IV. Motions to Compel

Pennelope moves to compel initial responses to Special Interrogatories, Set One ("SROG") and Request for Production of Documents, Set One ("RPD.")

Pennelope served the SROG and RPD on May 20, 2025. (Declarations of Michael Fluetsch ("Fluetsch Decls.") ¶ 3, Exs. A.) Plaintiffs responses were due on June 23, 2025. (*Id*.¶ 4.) Plaintiff has not responded and has not responded to Mr. Fleutsch's attempts to meet and confer. (*Id*. ¶ 5.)

Pursuant to Cal. Code Civ. Proc. § 2030.290, if a party to whom interrogatories are directed fails to serve a timely response then:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response then:

> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

A party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Plaintiff has failed to respond to properly propounded discovery which is a misuse of the discovery process (Code Civ. Proc. § 2031.010(d)) and the Court has discretion to impose sanctions. (Code Civ. Proc. § 2023.030(a).)

The Motions to Compel are **GRANTED**. Plaintiff is to provide complete verified responses, without objection, to SROGs and RFPD, and produce all responsive documents, by 5:00 p.m. om September 19, 2025.

The Court is cognizant of Plaintiff's pro se status and declines to award mandatory sanctions under Code Civ. Proc. section 2023.050(e). However, the Court has previously admonished Plaintiff to comply with all meet and confer requirements and to avoid involving the Court in unnecessary motion practice. (July 11, 2025 Ruling.) Accordingly, the Court believes sanctions are appropriate in this case.

Counsel for Pennelope seeks $3,420.00 in attorney's fees for both motions as well as filing fees in the amount of $120.00. (Fluetsch Decls. ¶8.) Mr. Fleutsch avers that he has a billing rate of $550 and incurred four hours drafting the motions. As no opposition was filed, he did not incur further charges. The Court finds that $550 is outside the reasonable rate charged in this jurisdiction and lowers the rate to $350.00. The Court also finds that as the motions were nearly identical and quite brief, four hours is excessive and reduces time spent to two hours.

Accordingly, the Court **GRANTS sanctions** in the amount of $700 and court filing fees in the amount of $120.00; $820 is to be paid by plaintiff to the Websters c/o their attorney, also by 5:00 p.m. on September 19, 2025.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants Webster to prepare a formal Order(s) in compliance with Rule of Court 3.1312 in conformity with this Ruling.

10:00 a.m. Calendar

MATTER OF THE LORA J. OSTROM TRUST

25PR8868

OBJECTOR'S MOTION TO SET ASIDE DEFAULT JUDGMENT OR, IN THE ALTERNATIVE, A NEW TRIAL

This is a probate matter brought by the Wendy Peeples aka Wendy J. Ostrom ("Petitioner") as Petition for Instructions for Trustee Distribution and For Accounting and Compelling the Redress of Breach of Trust against the Successor Trustee Dawn J. Ostrom ("Objector.") Now before the Court is the Trustee's Motion to Set Aside Default.

I. Background

Petitioner filed her petition on March 17, 2025, and filed proof of service upon Ostrom on March 21, 2025. On May 14, 2025, a notice of the petition hearing set for June 6, 2025, was filed and served on Objector's counsel, Claudia Shafer.

On June 6, 2025, the Court held the hearing on the petition. Objector was present but her counsel was not. During the hearing, the Court noted that Ostrom did not know where here attorney was and further that Ms. Shafer had a history of missed appearances. The Court further noted that Ms. Shafer had failed to file any written objections. Thereafter, the Court entered an Order granting the petition, removing Objector from her fiduciary duties, and charging costs and fees to Objector. Attorney Shafer was served with the Order by mail and e-mail on June 13, 2025.

Now before the Court are two motions filed by Petitioner: 1) motion for relief from judgment and, in the alternative, a 2) motion for a new trial.

II. Legal Standard

Pursuant to Code Civ. Procedure section 437(b), a judge must vacate a dismissal, default entry, or default judgment "whenever (1) an application is made no more than six

months after entry of judgment, (2) the application is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, and (3) the attorney's mistake, inadvertence, surprise or neglect in fact caused the dismissal or entry of default." Whenever relief is based upon an attorney's affidavit of fault, the court must order the attorney to pay reasonable legal fees and costs of the opposing side. (Code Civ. Proc. §473(b).)

Code of Civil Procedure section 657 governs motions for new trials and provides that a court may grant a new trial under certain specific circumstances. A new trial is authorized only if irregularity or misconduct has materially affected the substantial rights of the moving party, meaning that the error must be prejudicial. (*Jackson v. Park* (2021) 66 Cal.App.5th 1196, 1217.)

III. Discussion

Objector first moves for relief from default under Code Civ. Proc. section 473(b). In support of this motion, Objector provides the declaration of her attorney Claudia Shafer. Ms. Shafer avers that on the day before the June 6, 2025 hearing, she called the Clerk's office and informed it that she had just tested positive for Covid-19 and could not attend the hearing. (Declaration of Claudia Y. Shafer ("Shafer Decl.") ¶ 3.) Ms. Shafer asserts that she asked the Clerk to notify the Judge in this matter and orally requested a continuance. (*Ibid*.) Ms. Shafer also avers that she informed opposing counsel of her illness. (*Ibid.*)

In opposition, Petitioner first argues that Section 473 does not apply because this matter does not involve a default of dismissal, but rather an order entered after a noticed hearing. In support, Defendant cites two cases in which it was held that section 473(b) did not apply where there was no default judgment. (*Prieto v. Loyola Marymount Univ*.(2005) 132 Cal.App.4th 290, 295-296 [473(b) does not apply where counsel failed to file a timely response to a motion for summary judgment; (*Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, 1812 [437(b) does not apply where counsel failed to bring a case to trial within three years.].)

Here, Objector's attorney failed to attend the noticed hearing and the Court entered an Order providing exactly what Petitioner sought in her Petition. No witnesses were called and Objector did not provide any testimony. These factual circumstances render this case a "proceeding more equivalent to default" because at no time was Objector able to have her side heard on the merits. (*Peltier*, supra at 1817.) Objector never had an opportunity to present any defense or objection to the misconduct of her attorney.

The Court can exercise its discretion to relieve a party from what is essentially a default judgment based on attorney misconduct. (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584.) Here, the Objector showed up to attend the hearing but, according to the minute order from the hearing, could not explain why her attorney was absent. This suggests that Objector's own attorney failed to inform her that she was not going to attend the hearing on her behalf. Ms. Shafer's declaration backs up this presumption because noticeably absent from her declaration is any statement indicating that she spoke to her client about her illness and the hearing whatsoever. Under the very unique and limited circumstances of this case, relief under section 473 is appropriate.

The Court is also concerned that Petitioner's counsel failed to inform the Court on the day of the hearing about Ms. Shafer's illness. According to her declaration, Ms. Shafer contacted Petitioner's counsel prior to the hearing and alerted him to the fact that she had tested positive for Covid-19. However, Mr. Shafer did not inform the Court of this fact at any point during the hearing. Had the Court been aware of the illness, it may have been more reluctant to grant the Petition in its entirety without first hearing from Objector.

Accordingly, Objector's motion for relief is **GRANTED**. The motion for a new trial is therefore **DENIED** as moot.

The clerk shall provide notice of this ruling to the parties forthwith. Objector to prepare a formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling.