

November 21, 2025, Civil Law & Motion Tentative Rulings

1. CU0001258 Randy Lee Miller vs. Nevada Commons

Defendants' unopposed motions to compel Plaintiff Randy Lee Miller's responses to Defendants' Supplemental Interrogatories, Set Two, and Defendants' Supplemental Request for Production of Documents, Set Two, are granted. Defendants' requests for sanctions are also granted. Plaintiff shall serve verified responses and documents, without objections, within 10 days of service of the order after hearing.

Special Interrogatories

If a party to whom interrogatories are directed fails to serve a timely response, the propounding party may move for an order compelling response and for a monetary sanction. Code Civ. Proc. § 2030.290(b). The statute contains no time limit for a motion to compel where no responses have been served. All that need be shown in the moving papers is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. *See Leach v. Superior Court* (1980) 111 Cal. App. 3d 902, 905-906. Moreover, "[w]here no objections have been made within the statutorily permitted time, they are deemed waived." *Id.*

At bar, Defendants propounded interrogatories on Plaintiff on June 17, 2025, to which responses were due by July 21, 2025. No response of any kind has been served by Plaintiff. Therefore, an order compelling responses without objections is warranted.

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel motions for interrogatories or requests for production, unless the Court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Code Civ. Proc. § 2030.290(c).

While Plaintiff did not oppose Defendants' motion, his failure to respond to Defendant's special interrogatories and failure to meet and confer are a misuse of the discovery process that necessitated Defendant's motion. *See* Code of Civ. Proc. § 2023.010(d) (i); Code of Civ. Proc. § 2023.030. Monetary sanctions of are proper, including \$559.71 in attorney's fees (3.0 hours reasonable time to prepare the motion) and \$60.00 for the filing fee, for a total award of \$619.71.

Request for Production of Documents

Where there has been no timely response to a demand to produce documents, the demanding party may seek an order compelling a response. Code Civ. Proc. § 2031.300(b). Failure to timely respond waives all objections, including privilege and work product. Code Civ. Proc. § 2031.300 (a). Thus, unless the party to whom the demand was directed obtains relief from waiver, he or she cannot raise objections to the documents demanded. There is no deadline for a motion to compel responses. *See Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406.

At bar, Defendants propounded a Supplemental Request for Production of Documents on June 17, 2025, to which responses were due by July 21, 2025. No response of any kind has been served by Plaintiff. Therefore, an order compelling responses without objections is warranted.

While Plaintiff did not oppose Defendants' motion, his failure to respond to Defendants' request for production of documents and failure to meet and confer are a misuse of the discovery process that necessitated Defendant's motion. Code of Civ. Proc. § 2023.010(d) (i); Code of Civ. Proc. § 2023.030. Monetary sanctions are proper, including \$559.71 in attorney's fees (3.0 hours reasonable time to prepare the motion) and \$60.00 for the filing fee, for a total award of \$619.71.

2. CU0001580 Adrienne Schram vs. Bradley Shipley, et al.

Defendant Bradley Ray Shipley's motion for summary adjudication is denied.

Standard of Review

Code of Civil Procedure 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action..." Code Civ. Proc. §437c(f)(1). The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843). In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741.

"In ruling on the motion, the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. As such, the court will "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendants' own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor." *Wiener v. Southcoast Childcare Ctrs., Inc.* (2004) 32 Cal.4th 1138, 1142. Further, the court must consider "all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.

A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c, subd. (o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by

presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an essential element or defense, a court must grant a motion for summary adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

Objections to Evidence

Plaintiff's Objections: Objection one is sustained (lack of foundation, lack of personal knowledge, speculation). Objection two is overruled.

Defendant's Objections: The Court need not adjudicate these objections. The evidence subject to objection is not material to the Court's disposition of the motion. See Code Civ. Proc. § 437c(q) ("In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion.").

Request for Judicial Notice

Plaintiff's unopposed request for judicial notice is granted. The court notes that the judicially noticed document was not material to disposition of the motion.

Background

On August 29, 2024, Plaintiff Adrienne Schram ("Plaintiff") filed a complaint against Defendant Bradley Ray Shipley ("Defendant") and others, claiming legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiffs' title or any cloud upon Plaintiffs' title. The complaint includes two causes of action: (1) Quiet Title – Easement by Prescription; and (2) Injunctive Relief. The complaint alleges Plaintiff and Defendant each own property which touch one another at a common point, and that Plaintiff and her predecessors in interest have gained access to Plaintiff's property from a public thoroughfare and then across a roadway located on Defendant's property. Plaintiff alleges she owns an easement for ingress and egress that burdens Defendant's property over and upon the portion of the property on which the above roadway is located.

Analysis

Defendant moves for summary adjudication as to the first cause of action (Quiet Title – Easement by Prescription). Defendant argues that: (1) Schram's use of Shipley's properties does not meet the prescriptive period, see SSUMF ## 1-5, and Schram's predecessor in interest's (the Magliulos) use of Shipley's properties does not meet the prescriptive period (because Jeanine Magliulo abandoned her use of Shipley's properties in 2005). See SSUMF ## 29-32. (2) Schram's predecessors in interest permissively used the prescriptive route. See SSUMF ## 6-16. (3) Schram's predecessors in interest's use of the prescriptive route was, at best, occasional. See SSUMF ##17-28. Per Plaintiff, among other things, Shipley has failed to carry

his initial burden to demonstrate that there are no disputed issues of material fact and that, as a matter of law, plaintiff's cause of action fails. Plaintiff has the better argument.

"To establish the elements of a prescriptive easement, the claimant must prove use of the property, for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right." *Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032; *see Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593 ("The elements necessary to establish an adverse use are: (a) open and notorious use; (b) continuous and uninterrupted use; (c) hostile to the true owner; (d) under claim of right; and (e) for the statutory period of five years.")

At bar, Defendant has not met his initial burden of showing that the first cause of action for prescriptive easement cannot be established.

First, there is insufficient, admissible, evidence to establish, as a matter of law, that either Plaintiff or her predecessors in interest ("predecessors") had *permission* to use the path. *See* SSUMF 6-16; *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572 ("Whether the use is hostile or is merely a matter of neighborly accommodation ... is a question of fact to be determined in light of the surrounding circumstances and the relationship between the parties.").

Second, the evidence offered by Defendant does not establish, as a matter of law, that Plaintiff and her predecessors' use of the prescriptive route was *not* continuous and uninterrupted. *See* SSUMF ## 17-28. Continuous use can be demonstrated when a "[party] (and its predecessors) needed the roadway from time to time" and "made use of it." *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593. "A use may be continuous though there are periods of time more or less extended between the specific acts of use. Many easements, such as rights of way and rights of hunting or fishing, which are periodical or only occasional in use may be acquired by prescription." *Zimmer v. Dykstra* (1974) 39 Cal.App.3d 422, 432 (citation omitted).

Finally, the evidence offered by Defendant does not establish, as a matter of law, that Plaintiff and her predecessors did not use the route for the required period of at least five years. *See* SSUMF ## 29-32. The required five-year prescriptive period at issue is from no later than August 29, 2019 through August 29, 2024 (when the complaint was filed). Focusing on the period prior to 2023 (when Plaintiff acquired parcel 37 from Jeanine Magliulo), it is undisputed that the Magliulos used the route in question for a period of years. *See* SSUMF 19, 26. What is unclear is when that stopped. Jeanine Magliulo testified that she did not stop using the route before the year 2000. Magliulo Depo 42:1-17. She also testified that she did not recall whether she stopped using the route "by 2010." *Id.* at 42:1-23. Ms. Magliulo further indicated that she could not *recall* whether she used the route the last five to eight years of her ownership (*i.e.*, from July 15, 2015 to July 5, 2023). *Id.* at 43:12-17. She then stated that "Once Bunny [Brint Ramsey] passed away, I stopped using that [the route]. I don't know what year that was. I can't recall." *Id.* at 43:18-23. As for this last statement, Magliulo did not indicate *when* she stopped using that route, *i.e.* stopping immediately after Ramsey passed [in 2005] or later in time. Cognizant that the court must resolve all evidentiary objections and ambiguities in Plaintiff's favor, on this record, Defendant has failed to prove when Plaintiff's predecessors abandoned their use of the route (specifically, whether abandonment was prior to August 2019) and has *not*

affirmatively disproven the use of the route by Plaintiff and predecessors for the five years prior to commencement of the action. *See Weideman v. Staheli* (1948) 88 Cal.App.2d 613, 616 (“Abandonment is a question of intention and may be proved by the acts and conduct of the party alleged to have abandoned the property and the burden rests upon the party alleging abandonment to prove the same by satisfactory and competent evidence.”)

In sum, Defendant failed to meet his initial burden to show the first cause of action cannot be proven. Summary adjudication as to this claim is not warranted.

3. CU0001704 First U.S. Community Credit Union vs. Susan Amara German, et al.

The Court, on its own motion, strikes Defendant’s Susan A. German’s June 27, 2025, answer. Plaintiff’s September 17, 2025, motion to strike is denied as moot.

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part of that pleading. Code Civ. Proc. § 435(b)(1); Cal. Rules of Court, rule 3.1322(b). Where the plaintiff moves to strike the defendant's answer, the motion must be filed within the same time limit as that allowed in responding to a pleading, which, in the case of an answer, is ten days after service (unless extended by stipulation or court order). *See, e.g.*, Code Civ. Proc. § 430.40(b). At bar, Defendant’s answer was filed on June 27, 2025. Any motion to strike under Code of Civil Procedure section 435(b)(1) would have had to be filed within ten days. Thus, Defendant’s September 17, 2025, motion, is untimely.

The court has discretion, upon terms it deems proper, to (a) strike out any irrelevant, false, or improper matter inserted in any pleading and (b) strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Code Civ. Proc. § 436.

Plaintiff has demonstrated Defendant filed an answer *after* default had been entered. "A defendant against whom a default has been entered is out of court and is not entitled to take any further steps in the cause affecting plaintiff's right of action; he cannot thereafter, until such default is set aside in a proper proceeding, file pleadings or move for a new trial or demand notice of subsequent proceedings." *Brooks v. Nelson* (1928) 95 Cal. App. 144, 147-148. Therefore, the clerk improvidently filed Defendant’s answer after default was entered. The June 2025 answer by defendant Susan German is ordered stricken.

The court notes that a request for entry of judgment as to defendant Susan German was previously filed on May 9, 2025. Per the May 12, 2025, request of Plaintiff, the court has deferred further action in connection with the same.

4. CU0001783 Collin Smith vs. Dave's Landscaping, Inc

The matter is dropped from calendar. A party requested a motion hearing date but no motion has been filed.

5. CU0002094 In the Matter of The Mortgage Law Firm, PLC

Petitioner's September 9, 2025, motion to deposit surplus trustee's sale proceeds and schedule a prove-up hearing is granted as prayed.

Civil Code section 2924j subdivision (c) states, in pertinent part:

If after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any charges by the clerk pursuant to this subdivision.

Civ. Code § 2924j(c).

Petitioner is the Trustee under the Deed of Trust based upon a substitution of trust recorded on September 19, 2018, in the Nevada County Recorder's Office. Pet. 1:14; Exh. A. The Deed of Trust was secured by real property commonly known as 25970 Table Meadow Road, Auburn, CA 95602. Pet. ¶¶ 1-2. The property was sold at a trustee's sale on March 16, 2022 and generated funds exceeding the amount due and owing under the Deed of Trust. Pet. ¶ 7.

On April 19, 2022, Petitioner mailed a Notice of Surplus Funds to all potential claimants via first class mail. Lewin Decl. ¶ 5; Pet. ¶ 8; Attach. 8. Petitioner identified a potential claimant, Karen Sue Lugo ("Lugo"), the former trustor under the Deed of Trust. Lewin Decl. ¶ 6; Pet. ¶ 11.a; Attach. 11.a. On or about July 12, 2022, a purported claim was received from The Hendricks Group D&P, LLC ("Hendricks"), which included a purported Affidavit of Assignment of Claim and Authorization to Communicate with Hendricks, both purportedly executed by Former Trustor Karen Sue Lugo ("Former Trustor") on March 18, 2022. Lewin Decl. ¶¶ 7-10; Pet. ¶ 11.a; Attach. 11.a. Petitioner declares that based on communication with law enforcement authorities, it was informed that Hendricks was on a watch list for paralegal services in the business of defrauding former trustors of their foreclosure surplus proceeds claims, and based on the same informed Hendricks it would not distribute Former Trustor's proceeds to Hendricks and would attempt to locate Former Trustor directly. Lewin Decl. ¶ 13; Pet. ¶ 11.a; Attach. 11.a. Thereafter, Petitioner established contact with Lugo; Petitioner, however, has not received a claim for the funds from Lugo. Lewin Decl. ¶ 14; Pet. ¶ 11.a; Attach. 11.a.

On August 1, 2025, the Court previously denied without prejudice Petitioner's first motion to deposit surplus proceeds, schedule a hearing date, and discharge petitioner because Petitioner had failed to adhere to required notice requirements of Civil Code section 2924j(d). Lewin Decl., Exh. C. On August 5, 2025, Petitioner mailed a Notice of Petition, Petition, and related documents on all recipients on the Distribution List of the Notice of Surplus Funds sent on April 19, 2022. Lewin Decl., Exh. D. Therefore, Petitioner believes all claimants have been served with Notice of Petition, Petition, and related documents. Having received no claim for the surplus funds, Petitioner filed the present motion on September 9, 2025. Lewin Decl. ¶ 19. Therein, Petitioner requests permission to deposit the surplus funds of \$153,913.40 (less \$3,651.19 for attorney's fees and costs) with the Court and an order discharging Petitioner from the matter.

Having reviewed the Petition, the Court finds it satisfies the requirements of Civil Code § 2924j with respect to the trustee's declaration, trustee's notice, and service of written notice to all

potential claimants to the surplus funds. Good cause having been demonstrated, Petitioner is ordered to deposit surplus funds of \$150,262.21 with the Court within twenty days of this order. Upon deposit of the surplus funds to the Court and filing of the proof of service of the notice of disbursement hearing, Petitioner shall be discharged of further responsibility for the disbursement of sale proceeds. *See* Civ. Code § 2924j(c). A hearing on claims to the undistributed surplus funds is set for February 6, 2026 at 10:00 a.m. in Department 6. The Petitioner shall lodge a proposed written notice of the hearing on the claimants identified in the Petition and Declaration filed on May 15, 2025, with the Court by no later than December 1, 2025. The Clerk shall serve the same on all individuals noted therein as soon as possible thereafter.

6. CU0002182 County of Nevada v. Successors of Myrna Buettner, et al.

Demurrer

The October 27, 2025, demurrer of non-party Richard W. Alton is overruled.

As a preliminary matter, Richard Alton is not a party and lacks standing to file a demurrer (or to participate in this litigation).

Individuals entitled to notice of a request for appointment of a receiver include “all persons with a recorded interest in the real property upon which the substandard building exists” and the “owner” of the substandard property. *See* Health & Saf. Code § 17980.7(c). “The term ‘owner,’ for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.” Health & Saf. Code § 17980.7(f). “Successor in interest” means “[s]omeone who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance.” *Kaura v. Stabilis Fund II, LLC* (2018) 24 Cal.App.5th 420, 432–433, citing Black’s Law Dict. (10th ed. 2014) p. 1660. In addition, the phrase “successor in interest who had actual or constructive knowledge of the notice, order, or prosecution,” ... “refers to successors in interest who *already* had the necessary knowledge *when they succeeded to the interest.*” *Kaura*, 24 Cal.App.5th at 432.

At bar, the substandard building at issue is owned by Myrna Buettner, deceased. Her son, Richard Alton, is a potential heir to the estate of Myrna Buettner, now subject to administration (as of approximately October 28, 2025) by newly appointed administrator John DePiazza. Thus, Alton was not an “owner” of the building at issue at the time of the initial notice or order. Alton was not a person with a recorded interest in the real property associated with the substandard building. Finally, Alton is not a “successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.” Alton, at most, is an heir to the estate of Buettner. He has not succeeded to any interest (nor is there any reason to believe that he has succeeded to the exact same rights as the original owner).

In addition, or in the alternative, the demurrer is untimely. Petitioner filed its petition for an order to abate substandard building and appointment of receiver on June 18, 2025. Petitioner represents (without a proof of service to corroborate the same) that it mailed a courtesy copy of the summons

and complaint to Alton on or about August 7, 2025. Ordinarily, “[t]he time to file a written pleading in response to a summons in an action brought pursuant to [California Health & Safety Code section 17980 *et seq.*] is 10 days.” Health & Safety Code § 17990. Moreover, on August 22, 2025, Attorney John Ronge appeared specially for beneficiary Richard Alton in this Court. The Court, at the request of counsel Ronge, vacated its order previously granting the petition that day, and permitted Richard Alton to file any opposition to the same by no later than September 19, 2025. The instant demurrer was not filed by Alton until October 27, 2025, well beyond the ordinary statutory deadline and well beyond the extended deadline set by the Court at the request of Alton.

Lastly, the demurrer lacks merit. The court assumes, *arguendo*, that a demurrer is an authorized pleading in connection with the instant petition. In his notice of demurrer, Alton argues that the pleading does not state facts sufficient to constitute a cause of action and is uncertain. Alton, however, does not advance any specific argument related thereto. In any event, a review of the petition reveals that it sufficiently alleges a cognizable claim for relief and is not uncertain. To the extent Alton argues he was not provided required notice, for the reasons noted above, he was not entitled to notice because he is not a recognized party. In any event, he was afforded an opportunity to file any opposition he wished to the petition. Lastly, the pendency of case PR0000815 related to the Estate of Myrna Buettner does not serve a legal ground for this court to deem the petition legally insufficient.

The demurrer lacks merit and is overruled.

The Petition for Appointment of Receiver

The applicable law regarding appointment of a receiver under Health and Safety Code section 17980.7, is delineated by the Court of Appeal in *City of Desert Hot Springs v. Valenti* (2019) 43 Cal.App.5th 788:

“As explained in [*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 76 Cal.Rptr.3d 483, 182 P.3d 1027], when a building is maintained in a manner that violates state or local building maintenance regulations and ‘the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered’ (Health & Saf. Code, § 17980.6), the local enforcement agency may issue a notice and order requiring repair or abatement of the unlawful conditions. (*Gonzalez, supra*, 43 Cal.4th at pp. 919-920 [76 Cal.Rptr.3d 483, 182 P.3d 1027].) If the owner of the building thereafter fails to comply with the notice and order in a reasonable period of time, the enforcement agency can seek an order from the trial court appointing a receiver to oversee compliance. (*Id.* at p. 921 [76 Cal.Rptr.3d 483, 182 P.3d 1027].)” (*City of Crescent City v. Reddy, supra*, 9 Cal.App.5th at pp. 465-466, 215 Cal.Rptr.3d 351; see § 17980.7(c).)

Section 17980.7(c) has 15 subparagraphs, but only the first two address what the trial court must consider before appointing a receiver. First, “the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation.” (§ 17980.7(c)(1).) And last, “[t]he court shall not appoint any person as a receiver unless the person has demonstrated to the court their capacity and expertise

to develop and supervise a viable financial construction plan for the satisfactory rehabilitation of the building.” (§ 17980.7(c)(2).)

Id. at 793–794.

At bar, the declarations submitted by the County in support of the petition make it clear that abatement of the instant substandard building is required and that the receiver has the required capacity and expertise to execute those responsibilities. That noted, the issue is this: whether the owner has been afforded *a reasonable opportunity to correct the conditions cited in the notice of violation*. The record owner at the time of issuance of the March 28, 2025, notice to abate was decedent Myrna Buettner. Richard Alton (son of Ms. Buettner), indicated both before and after the March 28, 2025 notice, that he would take steps to address the non-compliance; Mr. Alton, however, was not and is not the legal owner. As of October 28, 2025, John DePiazza, a professional fiduciary, had been appointed to administer the Buettner Estate. In his October 27, 2025 declaration, Administrator DePiazza states that he will be able to bring the subject property into compliance with the requirements of law.

Given the current record, the Court requires further input from the Administrator as to how long it will take to bring the subject property into compliance as suggested and its position as to whether the owner has had a reasonable opportunity to correct. The Court also must learn the position of the County with respect to the same in light of the current circumstances.

7. CU21-085425 Samuel R. Spencer vs. Robert F. Sinclair, et al.

Plaintiff Samuel R. Spencer’s October 24, 2025, motion to file an extended memorandum in support of motion to vacate vexatious litigant designation is denied.

As a preliminary matter, Plaintiff has a right, as an individual deemed to be a vexatious litigant, to file an application for an order vacating the prefiling order and removing his name from the California Judicial Council’s vexatious litigant list. *See In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1346. Code of Civil Procedure 391.8(a) provides:

A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council’s list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

Here, the 2021 prefiling order was entered in this case; thus an application to vacate the prefiling order and remove Plaintiff from the Vexatious Litigant List would appropriately be filed in this case and heard by an appropriate judge of this Court.

Secondly, it is not at all clear that Plaintiff properly filed the *instant motion* without first seeking leave from the presiding judge. Given the existence of the prefiling order, Plaintiff was barred from filing *any* litigation without permission of the presiding judge. See Code Civ. Proc. 391.7(c). While Plaintiff had a right to file an application under Code of Civil Procedure section 391.8, that provision of law does not expressly authorize any filing beyond that application. Given that no party has objected to the request on this ground, the Court, in the interests of efficiency and justice, will simply turn to the substantive request.

Thirdly, “[t]he court may grant [an] application [under Code of Civil Procedure section 391.8] ‘upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.’” *Marriage of Rifkin & Carty*, 234 Cal.App.4th at 1346, citing Code Civ. Proc. § 391.8 (c); see *Lockett v. Panos* (2008) 161 Cal.App.4th 77, 93 (explaining “relevant criteria” to demonstrate “change of circumstances”). The normal page limit for a memorandum in support of a motion is fifteen pages. Cal. Rules Ct., Rule 3.1113(d). “A party may apply to the Court ...for permission to file a longer memorandum.” Cal. Rules Ct., Rule 3.1113(e). “The application must state reasons why the argument cannot be made within the stated limit.” *Ibid*.

At bar, Plaintiff has failed to demonstrate good cause to file a 75-page memorandum. Indeed, a review of the voluminous, proposed memorandum suggests that Plaintiff seeks to relitigate the propriety of the 2021 vexatious litigant order previously entered rather than address the pertinent question under Code of Civil Procedure section 391.8: whether there is a material change in the facts upon which the vexatious litigant and prefiling order was granted and whether the ends of justice would be served by vacating the order. Plaintiff’s request to file an oversized memorandum is denied. Plaintiff is reminded that he must abide by the current prefiling order in connection with any future filings he makes in *propria persona* in all courts of this state.