**December 5, 2025, Civil Law & Motion Tentative Rulings**

**1. CL0001259 Thomas M. Deal v. Fred Gerkensmeyer, et al**

Defendant Regional Housing Authority's ("RHA") unopposed demurrer is sustained without leave to amend.

Requests for Dismissal

As a preliminary matter, Plaintiff filed three requests for dismissal as to Regional Housing Authority on December 2, 2025. One clerk improvidently entered dismissal in connection with the first request which did not specify whether the dismissal sought was with or without prejudice. Another clerk did not enter dismissal in connection with the two subsequent requests. The Court, on its own motion, vacates entry of dismissal as to the first request which failed to designate, as required, whether dismissal was sought with or without prejudice. *See* Code of Civil Procedure section 581(b)(1).

Legal Standard on Demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. A demurrer may only challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Code Civ. Proc. § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

Complaints are read as a whole, in context, and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded and matters that may be judicially noticed, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see *also South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.

Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.

Operative Pleading

An amended pleading supersedes the original one, which ceases to perform any function of the pleading. *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130-1131. At bar, Plaintiff filed his First Amended Complaint ("FAC") on June 13, 2024, which superseded the complaint filed on December 5, 2023.

Government Claims Act

A housing authority is a "public body corporate and politic…." Health & Saf. Code § 34240. California law requires any plaintiff seeking monetary damages against a public entity to first file a claim with the entity before initiating a court action. *See* Gov. Code § 910. The claims statutes require timely filing of a proper claim as a condition precedent to maintenance of the action. *County of San Luis Obispo v. Ranchita Cattle Co.* (1971) 16 Cal.App.3d 383, 390. This obligation is a *mandatory* prerequisite to pursuing a complaint in court, and failure to do so is fatal to the cause of action. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454; *Farrell v. County of Placer* (1944) 23 Cal.2d 624, 630; *Johnson v. City of Oakland* (1961) 188 Cal.App.2d 181, 183. This requirement applies both to causes of action against public entities and individual employees. *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080. At bar, Plaintiff has failed to file a claim with RHA, a public body, before initiating his complaint. Therefore, his complaint fails on this basis alone.

Other Grounds for Demurrer

RHA also argues the demurrer should be sustained because, *inter alia,* it fails to plead the existence of a contract and is uncertain. The Court agrees.

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186. "A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing." *Robinson v. Magee* (1858) 9 Cal. 81, 83.

At bar, Plaintiff fails to plead the existence of a contract. Plaintiff's FAC alleges RHA "failed to obey and employ the [Code of Federal Regulations] and willfully caused Deal to suffer hardship, both financial[l]y and physically, without justification." FAC, p. 2, ¶ 2. The FAC fails to allege the existence of a written or oral agreement. Additionally, the FAC simply asserts legal conclusions rather than factual allegations. Therefore, Plaintiff fails to allege a cause of action against RHA.

RHA also argues that Plaintiff cannot seek punitive damages against a public entity. The Court agrees. Punitive damages are not available against public entities. *See* Gov't Code § 818 ("Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.").

The Court need not address whether the operative complaint is uncertain.

Amendment

Leave to amend is granted "where there is a reasonable possibility of successful amendment." *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 348. The demurrer was unopposed; Plaintiff fails to make any showing that there is a reasonable possibility that the defects in the pleading can be cured by amendment. Leave to amend is denied.

**2. CL0002527 Capital One N.A. vs. Paul Gilbert**

Defendant's August 11, 2025, motion to dismiss under Code of Civil Procedure section 430.10(e), construed as a demurrer, is overruled in its entirety. Defendant shall file and serve his answer to the complaint within ten days from notice of the court's decision. Defendant's August 11, 2025, statement of disqualification and notice of jurisdictional challenge are also denied.

Motion to Dismiss

Meet and Confer Requirements

Defendant failed to meet and confer as required and failed to file a meet and confer declaration as required. *See* Code Civ. Proc. § 430.41(a). The Court, in its discretion, will not require the parties to meet and confer and instead will proceed to the merits. Defendant is admonished that he is required to follow all the Rules of Civil Procedure and Court, including meet and confer requirements.

Pleading Requirements

Defendant seeks to dismiss the complaint for "breach of fiduciary duty, lack of jurisdiction, and insufficiency of pleading" under Code of Civil Procedure § 430.10(e). In opposition, Plaintiff argues that the elements of the cause of action for breach of contract are sufficiently alleged. In reply, Defendant argues, among other things, that Plaintiff has failed to provide any evidence in support of its Complaint. Plaintiff has the better argument.

"A complaint … shall contain …: [¶] (1) A statement of the facts constituting the cause of action, in ordinary and concise language." Code Civ. Proc., § 425.10 (a)(1). "[T]he general rule [is] that a complaint must contain only allegations of ultimate facts as opposed to allegations of evidentiary facts or of legal conclusions or arguments." *Burke v. Superior Court* (1969) 71 Cal.2d 276, 279, n. 4. "[P]leadings are allegations, not evidence …." *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 154. "The primary function of a pleading is to give the other party notice so that it may prepare its case …." *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 240 (citation omitted). Moreover, "[i]n general, complaints need not be verified. Verification is necessary only when called for by a particular statute." *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1222. "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the Plaintiff's proof need not be alleged." *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.

As to the first element, the contract, Defendant argues that the complaint fails to plead the existence of a valid contract and fails to allege evidence of consideration. Motion, 2:26-3:1. The Court disagrees.

"A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect." *McKell,* 142 Cal.App.4th at 1489 (citation omitted). "[A] party may accept a contract by conduct, as well as by words." *Cavalry SPV I, LLC v. Watkins* (2019) 36 Cal.App.5th 1070, 1081. At bar, Plaintiff alleges that the parties entered into a written agreement and has attached a copy of the written contract for a credit card account including a promise for Defendant to pay amounts due on the account. Complaint, ¶ BC-1 and Ex. A. These are sufficient allegations of a contract between the parties including consideration.

As to the second element, Plaintiff's performance of the contract, Plaintiff has alleged its own performance under the contract. Complaint, ¶ BC-3. This allegation is sufficient.

As to the third and fourth elements, breach by Defendant and resulting damage, Plaintiff has alleged that Defendant failed to make payments on the account as agreed, resulting in damages of $8,551.12. Complaint, ¶¶ BC-2, BC-4. These allegations are also sufficient. *See Nohl v. Del Norte County* (1919) 45 Cal.App. 306, 309.

Defendant demurs on a separate ground: that Defendant "tendered a lawful Bill of Exchange to the opposing party's counsel…in full and final settlement of the alleged obligation." Motion, 2:2-4. Defendant's demurrer on this grounds is based upon assertions of fact, *i.e.*, Defendant's communications to Plaintiff that are not alleged in the complaint. "Because a demurrer challenges defects on the face of the complaint, it can only refer to matters outside the pleading that are subject to judicial notice." *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) The referenced Bill of Exchange is not subject to judicial notice and the demurrer on this ground fails.

<u>Jurisdiction</u>

Defendant appears to suggest that there is a "lack of lawful jurisdiction" for the Court and requests the "Summons be declared void for want of lawful authority." Motion, 3:13-15.

"[A] demurrer to the jurisdiction of a Court of general jurisdiction lies only where the want of jurisdiction appears affirmatively on the face of the complaint." *Harden v. Superior Court* (1955) 44 Cal.2d 630, 636. "California's superior courts are courts of general jurisdiction, which means they are generally empowered to resolve the legal disputes that are brought to them." *Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 808. Such is the case here. No defect in jurisdiction affirmatively appears on the face of the complaint. The demurrer on jurisdictional grounds is overruled.

In sum, the demurrer is overruled.

Statement of Disqualification and Notice of Jurisdictional Challenge ("Challenge")

Defendant argues that jurisdiction is fatally defective because Clerk/CEO Waheed, who issued the summons, has no valid oath of office on file. Challenge 2:7-12. This argument fails. Defendant does not specify whether he challenges subject matter or personal jurisdiction and provides no authority to support his claim that a lack of oath somehow vitiates jurisdiction. He has forfeited any such claim or contention. *See Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 64 (claim/contention will be "forfeited for failure to support it with argument or citation to authority."). In any event, the factual claim is wholly devoid of merit. The Clerk/CEO duly executed an oath of office which is maintained as a record of the Court.

Defendant apparently moves to disqualify Judge Tice-Raskin under Code of Civil Procedure sections 170.1(a)(6)(A)(iii) and 170.3(c) alleging that the judicial officer's involvement would create, *inter alia*, "the appearance of bias and a conflict of interest." Challenge 2:14-22. This motion is denied. Defendant's moving papers do not comply with the applicable statutory requirements for a disqualification motion: he failed to "file with the clerk *a written verified statement* objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge." Code of Civ. Proc. § 170.3(c)(1) (italics added). Moreover, there is no evidence that any such request was *personally served* on the challenged judicial officer or the clerk as required. *See id.* Where a party fails to utilize the procedure set forth pursuant to Code of Civil Procedure section 170.3 for disqualification, his failure constitutes a waiver of the right to seek disqualification on those grounds. *People v. Bryant* (1987) 190 Cal.App.3d 1569, 1572–1573.

Lastly, Defendant requests the Court to suspend all proceedings until evidence is produced that this Court has lawful jurisdiction over him. Challenge 2:24-25. This request is denied. Defendant does not specify whether he challenges subject matter or personal jurisdiction and provides no authority to support his claim that jurisdiction is somehow lacking. Once again, this undeveloped claim/contention is deemed forfeited. *See Allen*, 234 Cal.App.4th at 64.

**3. CL0003236 Ali Payravi vs. Lascoe John**

This matter has been continued to December 5, 2025, at 1:00 p.m., at the request of Defendants.

Defendants John J. Lascoe and Pamela A. Lascoe's motion to quash service of the summons and complaint is granted.

Defendants' unopposed request for judicial notice is granted.

"It was incumbent upon plaintiff, after the filing of defendant's motion to quash, to present evidence discharging [their] burden to establish the requisites of valid service on defendant." *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1160. "It is well settled that '[i]n the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish that court's personal jurisdiction over a defendant.

[Code Civ. Proc.] § 410.50. When a defendant challenges that jurisdiction by bringing a motion to quash, *the burden is on the plaintiff to prove the existence of jurisdiction* by proving, inter alia, the facts requisite to an effective service.' " *Ibid*. (footnote and parentheses omitted, italics in original).

Code of Civil Procedure section 415.20(b) states:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Code Civ. Proc. § 415.20; *see id.* Comment for subd. (b) ("The papers must be left in the presence of a competent member of the household or a person apparently in charge of such business, as to case may be, who must be at least 18 years of age and be informed of the general nature of the papers. In addition, a copy of the papers thereafter must be mailed (by ordinary first-class mail, postage prepaid) to the person to be served at the place of delivery.")

Here, the Court assumes, *arguendo*, that a copy of the summons and complaint could not with reasonable diligence be personally served on Defendants. *See Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1391–1392 (" 'Ordinarily, ... two or three attempts at personal service at a proper place should fully satisfy the requirement of reasonable diligence and allow substituted service to be made.' "). The Court also assumes that "[t]he gate guard in this case must be considered a competent [adult] member of the household and the person apparently in charge." *Id.* at 1393. That said, on the record presented, Plaintiff has failed to offer any proof that his process server (not a registered server) informed the unidentified, female security guard of the general nature of the papers purportedly left on October 17, 2025. *See* 11/10/25 Proofs of Service. Plaintiff, thus, has failed to prove the existence of jurisdiction by proving *all* the facts requisite to an effective service.

Moreover, Plaintiff cannot claim substantial compliance with the substitute service requirements. There is no showing of partial or colorable compliance with the requirement to inform the individual served of the general nature of the papers. *See American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 391. "[T]here must be at least substantial compliance with the relevant statutory requisites for service, which plaintiff failed to establish here." *Lebel*, 210 Cal.App.4th at 1165.

The motion to quash service of process is granted.

**4. CU0001285 17031 LLC, a California Limited Liability Company vs. Jacks, Joseph, et al.**

Argument will be heard in connection with Plaintiff 17031 LLC's motion to consolidate the instant matter with San Francisco County Case No. CGC-24-613115.

"A judge may, on motion, transfer an action or actions from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404." Code Civ. Proc. § 403. "The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in [Code of Civil Procedure section] 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action." *Ibid.* A judge must consider the guidelines set forth in Rules of Court, rules 3.400-3.403 to determine whether a case is complex. Rules of Court, Rule 3.502. "Notice of the motion shall be served on all parties to each action and on each court in which an action is pending." Code Civ. Proc. § 403.

Moreover, "[i]f the court orders that the case …be transferred from another court, the order must specify the reasons supporting a finding that the transfer will promote the ends of justice, with reference to the following standards: (1) The actions are not complex; (2) Whether the common question of fact or law is predominating and significant to the litigation; (3) The convenience of the parties, witnesses, and counsel; (4) The relative development of the actions and the work product of counsel; (5) The efficient utilization of judicial facilities and staff resources; (6) The calendar of the courts; (7) The disadvantages of duplicative and inconsistent rulings, orders, or judgments; and (8) The likelihood of settlement of the actions without further litigation should coordination be denied." Rules of Court, rule 3.500(d).

At bar, the July 7, 2025, notice of motion to consolidate reflects service on Defendants; it does not reflect service on the San Francisco Superior Court. How, if at all, does this issue impact the motion?

In addition, do Defendants wish to file a surreply brief in light of the new evidence presented in Plaintiff's reply (as suggested by Plaintiff)?

**5. CU0001540 Bradley Dorigo, et al. vs. County of Nevada**

No appearances are required. Plaintiff's counsel's unopposed motion to be relieved as counsel is granted. On the Court's motion, the case management conference scheduled for December 8, 2025, is continued to January 26, 2026; Plaintiff's counsel shall give notice of the same. Counsel is ordered to prepare and submit a revised order (MC-053) that reflects the continued case management conference date of January 26, 2026. The order relieving counsel will be deemed effective only when counsel files a proof of service of the executed order on the client. *See* California Rules of Court, Rule 3.1362(e). Counsel shall submit the revised order for the Court's signature within two (2) court days.

**6. CU0001580 Adrienne Schram vs. Bradley Shipley, et al.**

On its own motion, the Court continues the Pretrial Conference to December 5, 2025, at 11:00 a.m.

**7. CU0002001 Bruce Lee Allen Construction, Inc. vs. Tobin Dougherty et al**

Argument will be heard in connection with Plaintiff Bruce Lee Allen Construction Inc.'s motion to compel discovery responses by Defendants and for sanctions.

Plaintiff shall state its position with respect to the request by the defense for a continuance.

**8. CU0002070 Antoinette Lee Brantley v. Jasmine Drake**

Petitioner Antoinette Brantley's unopposed motion for attorney's fees and costs is granted. The Court finds that the attorney's fees requested by Petitioner for time spent prosecuting the instant action are reasonable based upon (1) the nature of the litigation; (2) its difficulty; (3) the amount involved; (4) the skill required in its handling; (5) the skill employed; (6) the attention given; and (7) the success in the case. *See* Code Civ. Proc. § 527.6(s); *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; Klein Decl., ¶¶ 3-7, Exhibit B. The requested costs are likewise reasonable. The court awards fees and costs as prayed in the total amount of $6,131.40.

9. **CU0001750 McKellar Tree Service v. Blue Lead Gold**

Proposed Intervenor Red Dog Mining and Reclamation, LLC's ("Red Dog") motion to intervene is granted. Red Dog is granted leave to file the answer in intervention attached to the moving papers by December 12, 2025.

The Court sets a case management conference for December 22, 2025, 09:00 in Department 6. The Court continues the hearing/ruling as to Plaintiff McKellar Tree Service & Logging, Inc.'s request for a default judgment to the same date. The parties shall meet and confer regarding what motions, if any, are anticipated in the immediate future, and when the Court should reset the hearing related to the request for a default judgment.

Motion to Intervene

Request for Judicial Notice
Red Dog's unopposed requests for judicial notice are granted. *See* Evid. Code § 452(d).

The Merits

"An intervention takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons" and joins a plaintiff in seeking relief, unites with a defendant in resisting the claims of a plaintiff, or demands relief adverse to both a plaintiff and a defendant. Code Civ. Proc. § 387(b). "The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment." *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504.

Code of Civil Procedure § 387(d) provides as follows:

> (1) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied:
>
> (A) A provision of law confers an unconditional right to intervene.
>
> (B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless the person's interest is adequately represented by one or more of the existing parties.
>
> (2) The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both.

Code of Civil Procedure section 387(c) provides that a nonparty "shall petition the court for leave to intervene by noticed motion or by ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests."

The applicable standard for intervention is set forth in *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560:

> Mandatory intervention is governed by Code of Civil Procedure section 387, subdivision (d)(1)—which "should be liberally construed in favor of intervention." *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200, 242 Cal.Rptr. 447. Under that section, "a party's proposed intervention must be timely." *Lofton v. Wells Fargo Home Mortgage* (2018) 27 Cal.App.5th 1001, 1012, 238 Cal.Rptr.3d 626 (Lofton). If timely, then the proposed intervenor, to establish mandatory intervention under subdivision (d)(1)(B), must show (1) " 'an interest relating to the property or transaction which is the subject of the action' " *Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423, 79 Cal.Rptr.3d 915 (Siena Court); italics omitted; (2) "he or she 'is so situated that the disposition of the action may as a practical matter impair or impede' " his or her " 'ability to protect that interest' " *id.* at p. 1424, 79 Cal.Rptr.3d 915; and (3) he or she is not " 'adequately represented by the existing parties' " *ibid.*

*Id.* at 572-73 (parentheses omitted).

Red Dog asserts it has a direct and immediate interest justifying its intervention because Plaintiff is seeking a judgment determining that it holds a valid mechanic's lien secured by real property now owned by Red Dog. Plaintiff does not contest the same. The Court finds that Red Dog has a direct interest in the property subject to the action.

Red Dog also asserts the disposition of the action may impair its ability to protect its interest in the subject property, and its interests are not being adequately represented by the existing parties. Plaintiff does not contest the same. Indeed, it appears that Defendants did not answer the

complaint, are in default, and Plaintiff seeks default judgment determining the validity of the mechanic's lien secured by the real property owned by Red Dog. The Court finds that the disposition of the action may impair Red Dog's ability to protect its interest in the subject property.

The parties dispute the timeliness of Red Dog's motion to intervene. Plaintiff contends Red Dog had over ten months to file its motion to intervene after acquiring its interest in the property. Red Dog argues it reasonably believed Plaintiff was precluded from proceeding against Defendant Blue Lead Gold Mining, LLC ("Blue Lead") by virtue of the automatic stay in Blue Lead's Chapter 7 bankruptcy proceeding, and only learned that Blue Lead was not taking any steps to prevent an entry of default judgment in late September 2025.

*Crestwood Behavioral Health, Inc.* also addresses the standard for timeliness:

> "Timeliness is determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: '(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for the delay.' " *Smith* [*v. Los Angeles Unified School Dist.* (9th Cir. 2016) 830 F.3d 843,] 854. " '[D]elay in itself does not make a request for intervention untimely.' " *Kane County, Utah v. U.S.* (10th Cir. 2019) 928 F.3d 877, 891 (*Kane County*). When mandatory intervention "is sought, because 'the would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive.' " *Lopez-Aguilar v. Marion County Sheriff's Dept.* (7th Cir. 2019) 924 F.3d 375, 388–389; see *Benjamin [v. Department of Public Welfare of the Commonwealth of Pa.* (3d Cir. 2012) 701 F.3d 938,] 948 ["There is a general reluctance to dispose of a motion to intervene as of right on untimeliness grounds because the would-be intervenor may be seriously harmed if not allowed to intervene"].)
>
> Although the totality of the circumstances should be considered, "prejudice to existing parties is 'the most important consideration in deciding whether a motion for intervention is timely.' " *Smith, supra,* 830 F.3d at p. 857. This does not, however, include prejudice that would result from allowing intervention. *Ibid.* Rather, only the " 'prejudice caused by the movant's delay' " should be considered. *Kane County, supra,* 928 F.3d at p. 891. Indeed, California courts have found intervention to be timely based solely on the absence of such prejudice.

*Crestwood Behavioral Health, Inc., 7*0 Cal.App.5th at 574. Of note, "the timeliness of a motion to intervene under section 387 should be determined based on the date the proposed interveners knew or should have known their interests in the litigation were not being adequately represented." *Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 282 (trial court erred in using "the date on which Movants knew or should have known about this litigation.")

At bar, the litigation is in the early pre-trial stages. A complaint was filed in December 2024. Service was effectuated in January and February 2025. Defaults were entered in March and April 2025; a default judgment hearing was scheduled by the Court for September and continued

at the request of Plaintiff to October 2025. An initial default judgment hearing was conducted on October 17, 2025 and continued so that Plaintiff could submit supplemental briefing and evidence by November 10, 2025. Ruling as to the default originally was scheduled for December 5, 2025. The instant motion to intervene was filed November 13, 2025 and set for hearing by the Court on December 5, 2025. In short, there has been limited pre-trial litigation as to the default requested and there has been no other significant substantive litigation.

Second, the cognizable delay was minimal and associated with a legitimate purpose. Red Dog became aware of the instant lawsuit in April 2025. 11/24/25 Bleck Dec., 2:6-8. At that time, Red Dog believed that Plaintiff was precluded from proceeding against Blue Lead by virtue of the automatic stay in Blue Lead's Chapter 7 bankruptcy, and that Red Dog would not be bound any judgment that might be entered against either defendant since Red Dog was not named as a defendant. *Id*., 2:4-17, Ex l. In late September, 2025 Red Dog learned, for the first time, that a default prove up hearing was scheduled for October 2025, and that Blue Lead did not intend to take any steps to prevent a default judgment from being entered against it. *Id.*, 2:20-23. Red Dog then retained counsel on October 10, 2025 and began taking steps to protect its interests in this lawsuit and its real property. *Id.*, 2:23-25. The instant motion was filed November 13, 2025. On this record, the Court finds that Red Dog knew or should have known their interests in the litigation were not being adequately represented in late September, 2025. The delay at issue, at most, was from late September 2025 through November 13, 2025, a period of two to three weeks. Moreover, the delay at issue seemingly appears to be associated with the time necessary for Red Dog to procure counsel and for counsel to prepare and file the instant intervention motion.

Turning to prejudice, Plaintiff contends as follows:

> If the court were to allow RED DOG to intervene after all this effort, [Plaintiff] MTL would be substantially and irreparably harmed. RED DOG acquired its "interest" on February 6, 2025, and did nothing to advance its alleged interest until now. Over 10 months have passed and thousands of dollars in attorney fees/costs have been incurred by MTL in pursuing and protecting its mechanics lien rights. Again, to allow an intervention after all this activity has occurred would not be fair and would severely prejudice MTL.

The Court is not persuaded. The Court cannot consider purported prejudice that would result from allowing intervention; it can only consider prejudice *caused by* the movant's delay from late September 2025 through November 13, 2025. Here, Plaintiff has made no specific showing of "financial" prejudice during that time period. Indeed, the billing records submitted by Plaintiff's counsel as part of Counsel Scoffield's November 10, 2025, declaration contain no specific entries related to attorney's fees and costs for the period from late September through November.

The Court, considering the totality of the noted circumstances, concludes that intervention is timely.[1]

[1] There does appear to be one entry on a fees/cost chart for potentially unbilled fees in the amount of $2,307.50. The Court does not know the time period for these fees. Even if the Court assumed, *arguendo*, that these unbilled fees relate to the applicable time period in September and

November, and that, but for the delay, Plaintiff would not have incurred such expenses, the Court would reach the same conclusion. That level of financial prejudice is, at best, minimal. In addition, the remaining timeliness factors previously described strongly favor a finding of timeliness and substantially outweigh any minimal, financial prejudice.