Dept. 2 Civil Law and Motion Tentative Rulings for Monday, Sept. 19, 2022 @ 1:30 p.m.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day prior to the scheduled hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 2 is (209) 588-2382. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

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2. CV64612 **Evergreen Bank Group v. Rowland**
Hearing on: Application for Writ of Possession
Moving Party: Plaintiff
Tentative Ruling: **Grant on condition of undertaking, with counterbond option**

This is collections case involving a delinquency on a retail installment contract and security agreement for a 1968 Chevrolet Camaro, which Plaintiff purchased for approximately $40,000. Before the Court this day is Plaintiff's application for a writ of possession.

First, this Court must address the elephant in the room, to wit: no opposition. A proof of service filed herewith indicates that Plaintiff was personally served with the summons, complaint and all writ of possession papers on August 9, 2022. The address used for service is not the same address listed for Defendant on the subject contract, but is the same address as what appears on the pink slip and the Fed-Ex's Notice of Acceleration and Demand for Surrender. Defendant is aware of Plaintiff's desire to repossess the vehicle. See Leake Declaration, Paragraph 23. Based on the evidence presented, and the statutory presumption favoring professional process servers (see Evid. Code, §647), this Court concludes that Defendant was properly served with the summons and notified of this day's motion for provisional relief. Therefore, the absence of opposition must be viewed as a tacit confession that no viable defense to the charge exists.

As for the merits, pursuant to CCP, §§ 512.010, *et seq*, a writ of possession may issue if the Plaintiff has established probable validity of its claim, meaning that the evidence permits a finding that it is "more likely than not" Plaintiff will obtain a judgment against the Defendant on the possession claim. See CCP, §511.090; *People v. Superior Court* (2002) 27 Cal.4th 888, 919. To meet this standard, the Plaintiff must show (1) that it is entitled to immediate possession of the property; and (2) that Defendant's continued possession is wrongful. CCP, §512.010(b)(1)-(2). As to the first element, Plaintiff need only make "a showing" of the basis for immediate entitlement, and unpaid invoices coupled with a secured interest generally satisfies the minimal threshold required for this element. *Cassel v. Kolb* (1999) 72 Cal.App.4th 568, 575-576. Based on a review of the controlling contract, the various assignments, the exhibits and the Leake declaration, this Court concludes that Plaintiff has demonstrated probable validity. Since the vehicle is presumably being held at private property, Plaintiff must also establish probable cause to believe that the property is in fact located at the private place. CCP, §512.010(b)(4). Although Plaintiff is uncertain as to the vehicle's location, Plaintiff reasonably opines that the vehicle is being kept at Defendant's primary residence here in Sonora. See Leake Declaration, Paragraph 20.

Finally, if a writ of possession is to issue, pursuant to Code of Civil Procedure, §515.010, the Plaintiff must file an undertaking with the Court of not less than twice the value of the Defendant's interest in the property unless "the Court finds that the Defendant has no interest in the property." Plaintiff affirms that the amount due and owning on the contract ($31,752)

exceeds the value of the vehicle ($30,000). See Leake Declaration, Paragraph 18-19. In fairness, given that the vehicle had a FMV of $40,000 in 2016, and given the absence of evidence from Leake supporting his assessment of the vehicle's current value, it is not clear to this Court whether Defendant has any equity in it or not. Since this is Plaintiff's burden to carry, and since Plaintiff is not openly opposed to posting a bond, this Court hereby grants the writ of possession for the subject vehicle on condition that Plaintiff post a bond of $5,000. Defendant shall have five (5) business days to post a counterbond of $15,000 to stay this possession order. See CCP, §515.010(b); *Edwards v Superior Court* (1991) 230 Cal.App.3d 173, 178.

3. CV64289 Greater Yosemite Council of the Boy Scouts v. Owens Corning
Hearing on: Request to Enter Default Judgment
Moving Party: Plaintiff
Tentative Ruling: **Grant**

This is a quiet title action involving APN 023-080-005-000, commonly referred to as 20000 Dry Meadow Road, Strawberry, California (hereinafter "Subject Property"). At issue is a reverter clause contained in a Grant Deed recorded on December 29, 1969.

Before the Court this day is a request for entry of a default judgment against unknown claimants. According to Plaintiff, the only known adverse claimant was Owens Corning, who was dismissed from the action "with" prejudice after delivering a Quitclaim Deed to Plaintiff. Plaintiff separately claims that any interest once held by Owens Corning lapsed by operation of law pursuant to the modified rule against perpetuities codified at Civil Code, § 885.030(a). Although it would have been helpful to see the actual Quitclaim Deed, Plaintiff is correct that any reverter established in 1969, and not thereafter expressly preserved by recordation, would have lapsed. Although it might have been more prudent to secure a default judgment against Owens Corning as well, that matter is not before this Court today.

In terms of "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in [the Subject Property] adverse to Plaintiff's title, or any cloud upon Plaintiff's title thereto," these unknown persons were served via publication in The Union Democrat on March 23, 2022, March 30, 2022, April 6, 2022, and April 13, 2022. Even though the order for publication called for publication of the *entire* three-page summons, and only the first and third pages were published, those were the pages containing the material information. As such, the publication itself was adequate. In terms of due process, assuming that Plaintiff has indeed discharged its duty to make a reasonable and diligent search of the chain of title, and failed to identify anyone who might be known to have an interest therein, use of a generic "anyone and everyone" summons is permissible. See CCP, §§ 415.50(b), 762.060, 763.010; *Rios v. Singh* (2021) 65 Cal.App.5th 871, 883; *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1506; *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 934; in accord, *MERS v. Robinson*, 45 F.Supp.3d 1207, 1210 (C.D. Cal. 2014). There is no evidence to suggest that

Plaintiff is aware of, or willfully blind to, other adverse claims. The time having passed for any unknown person to respond to the summons, and there being no response on file, Plaintiff is indeed entitled to a default judgment against the unknown persons. Although Plaintiff makes reference to a proposed judgment, there is in fact nothing in the Court file (lodged or otherwise).

4. CV64571 **In re Transfer by SP**
Hearing on: Petition to Transfer Structured Settlement Payments (Continued)
Moving Party: Petitioner J.G. Wentworth
Tentative Ruling: **Hearing Required**

This is a special proceeding for the approval of a proposed transfer of future payments from a structured settlement. The California Legislature has adopted the Structured Settlement Transfer Protection Act to protect structured settlement payees from exploitation by factoring companies. The Court-approval process requires the factoring company to file a petition in the county in which the payee resides for approval of the transfer, attaching copies of pertinent documents and proving specified information. See Insurance Code, §§ 10136, 10139.5; *RSL Funding, LLC v. Alford* (2015) 239 Cal.App.4th 741, 745; *321 Henderson Receivables Origination LLC v. Sioteco* (2009) 173 Cal.App.4th 1059, 1064-1066.

The salient facts are as follows:

- Payee: 19 years of age, no minor children, unemployed. He is "currently experiencing a financial hardship [and] will use the money to purchase land to build my future home."
- Prior Transfers: Payee advises that this Court approved a transfer of $34,713.95 for him on June 15, 2021 (see CV63448) on the representation that he needed the money to buy a car, rent an apartment, and pay for barber school. That petition went through numerous amendments and delays before the transfer was approved. **Payee neglected to mention that he had two unsuccessful petitions (CV63575, CV63925)**.
- Settlement: Payee indicates that he has no copy of the underlying settlement agreement, but notes that it was executed sometime in 2005 when he was very young. He is of the opinion that the settlement was not intended to cover future medical needs.
- Payments to Transfer: Payee was entitled to a lump sum payment of $114,713.95 on June 25, 2023. He transferred away $34,713.95 in CV63448, and now wishes to transfer away the remaining annuity balance of $80,000.00 in exchange for $66,000.00.
- Quotient: 85.66%, using a present value discount rate of 3.6%, and an effective annual discount rate of 19.84%. These rates are quite favorable to petitioner, but given the relatively short window between payment and maturation, it is not unreasonable.

As previously advised, the payee must disclose "the amounts and sources of the payee's monthly income and financial resources." Insurance Code, §10139.5(c)(4). He has still not done so. In addition, while the terms of the proposed transfer are acceptable, this Court is having difficulty with the concept of payee using his entire annuity to buy a vacant parcel of land. For a young

person with no higher education and no job, this seems unwise. See Insurance Code, § 10139.5(b)(1)-(4). A hearing is required because this Court has questions, and payee is permitted by statute to provide additional information at the hearing. Insurance Code §10139.5(d). If no appearances are made, the petition will be deemed *denied without prejudice*.

5. CV64536 **James v. Boyer et al**
Hearing on: Motion to Quash Service of Summons
Moving Party: Defendant Boyer
Tentative Ruling: N/A; motion withdrawn

This motion was withdrawn by the moving party, notice and request filed August 11, 2022.

6. CV64645 **PG&E v. LaForge**
Hearing on: Preliminary Injunction
Moving Party: Plaintiff
Tentative Ruling: **Continue for Site Inspection**

This is a nuisance action filed by PG&E against a resident who is refusing to give PG&E access to its own electrical service facilities, which happen to be on that resident's private property. PG&E would like very much to service the equipment on Defendant's property (a process PG&E calls "hardening"), but after some bad blood from prior dealings, Defendant is not having it.

To fulfill its legal (Public Util. Code, § 8386) obligations, and comply with current oversight requirements, PG&E must aggressively harden as much of its dilapidated electricity delivery system as possible – particularly in the rural and mountainous regions of California prone to trees and wind. Under normal circumstances, a caravan of utility repair service providers coming up the driveway would be viewed by residents as the coming of the calvary, no doubt conjuring up a warm embrace and homemade lemonade. Unfortunately, here in California, PG&E is viewed with disdain and distrust by many. PG&E has become somewhat synonymous with *causing* wildfires (see Dixie, Kincaid, Camp, and roughly 30 others since 2017), and is seen by many (and not just Hon. Alsup) as being more of the problem and less of the solution. PG&E comes to the rescue, but it seems many do want their brand of rescuing.

Before the Court this day is an application by PG&E for a preliminary injunction. A preliminary injunction is an equitable remedy designed to preserve the existing status quo until the dispute between the parties can be finally resolved on the merits. Preliminary injunctions are generally available to avoid waste (CCP, §526(a)(2)), to keep a party from violating the rights of another (CCP, §526(a)(3)), and whenever sufficient grounds exist pursuant to case law (CCP, §527(a)), such as when the applicant has demonstrated a likelihood of prevailing on the merits and yet is likely to suffer in the interim irreparable harm which cannot be adequately addressed with

money. Courts refer to this as a sliding scale of considerations – how likely the party is to win versus how much harm it will suffer awaiting its day in court. See *White v. Davis* (2003) 30 Cal.4th 528, 554; *Butt v. State of California* (1992) 4 Cal.4th 668, 677-678; *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545, 551; *Amgen Inc. v. Health Care Services* (2020) 47 Cal.App.5th 716, 731; *Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361; *Aspen Grove Condominium Ass'n v. CNL Income Northstar LLC* (2014) 231 Cal.App.4th 53, 62-64. Although Plaintiff does not have a cause of action for interference with an easement, both sides treat the operative pleading as if it contains one. Rather than direct the filing of a First Amended Complaint, this Court shall proceed on the offer of proof.

As previously noted, the first issue which must be tackled – and which both sides completely missed – is whether the proposed injunction is mandatory or prohibitory. An injunction which requires a party to take affirmative action is usually classified as a mandatory. Mandatory injunctions are rarely granted and done so only in the most extreme of cases where the right to relief is clearly established. See *Brown v. Pacifica Found., Inc.* (2019) 34 Cal.App.5th 915, 925; *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184; *Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493. If PG&E is asking for a *mandatory* injunction, PG&E has a serious hill to climb.

The second issue to tackle – which both sides also missed – is this: since a preliminary injunction can only issue to preserve the status quo, what is the "status quo" for this particular dispute. From the time this lawsuit was filed, and continuing thereafter, PG&E claimed that it was physically unable to gain access to its equipment on Defendant's property due to the presence of various barriers (logs, barrels, rope, vehicles, people). PG&E is asking this Court to order Defendant to *remove* those barriers because removal of those barriers is the only way for it to reach, service, and maintain its equipment. Defendant argues otherwise, noting that the barriers have been present since 2016, and that PG&E had no trouble accessing its equipment in the past.

Since both of the to-be-tackled issues overlap, the starting point for both is our California Supreme Court's decision last year in *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030. There, the Court reaffirmed the rule of thumb that injunctions asking parties to remove barriers *alter* the status quo *and* are mandatory:

> "Perhaps the prototypical mandatory injunction is an order requiring the Defendant to remove an improvement it has made to challenged property. For example, in an action to establish an easement, a preliminary injunction ordering a party to remove an existing fence that blocks the easement is a mandatory injunction, while restraining the party from parking or storing vehicles along the easement is a prohibitory injunction. But mandatory injunctions in property disputes are not limited to tear-down orders." *Id*. at 1042.

The test for determining what the true status quo is – and thus whether the injunction sought is prohibitory or mandatory – is not always black and white. See *Daly v. San Bernardino County*

Bd. of Supervisors (2021) 11 Cal.5th 1030, 1052 ["It is not always easy to distinguish a restraint from a command, or vice versa. There are no magic words that will distinguish the one from the other."] Most courts now look *not* to the existing landscape when the complaint was filed, but rather to the last actual peaceable, uncontested status which preceded the pending controversy. *Id*; *People v. iMERGENT, Inc.* (2009) 170 Cal.App.4th 333, 343. The test is not as usable, however, for "tear down" or "remove" cases since "an injunction preventing the Defendant from committing additional violations of the law may not be recharacterized as mandatory merely because it requires the Defendant to abandon a course of repeated conduct as to which the Defendant asserts a right of some sort. In such cases, the essentially prohibitory character of the order can be seen more clearly by measuring the status quo from the time before the contested conduct began." *Daly* at 1046. In the end, the question turns on whether Defendant had an existing property right to create the barriers in the first instance, without regard to PG&E's desired access. If Defendant was entitled to block access, ordering him to remove the barrier is undoubtedly a mandatory injunction subject to the much higher evidentiary threshold. See, *e.g., Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 649; *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1094-1098.

There is no disagreement that Defendant owns the property in question, and as such he is entitled as record owner to erect any barrier he wants (subject to any contractual (HOA) or regulatory (city/county) land use restrictions). PG&E contends that Defendant does not have *exclusive* rights to the area of his property at issue because PG&E has acquired a prescriptive easement over both the area where its equipment rests, and any necessary egress/ingress thereto. This Court first notes that Plaintiff failed to include the required sight map. Pursuant to CRC 3.1151, an application for a preliminary injunction involving real property easements or encroachments "must depict by drawings, plot plans, photographs, or other appropriate means, or must describe in detail the premises involved, including, if applicable, the length and width of the frontage on a street or alley, the width of sidewalks, and the number, size, and location of entrances." Although the papers filed for and against the injunction includes photographs and general descriptions, the information provided does not provide this Court enough detail to visualize both the barriers and the access needed by PG&E. This Court will do its best to muddle through without it.

An easement is a nonpossessory and restricted right to a specific use or activity upon another's property. It is not a type of ownership, but rather an incorporeal interest in land which confers a right upon the owner thereof to some benefit or lawful use out of or over the estate of another. The key distinction between an ownership interest in land and an easement interest in land is that the former involves possession of land whereas the latter involves a limited use of land. In general, and unless the easement expressly provides otherwise, the landowner may freely use his or her property so long as he or she does not "unreasonably interfere" with the easement, but the easement holder is only allowed to use the easement in such a way which imposes as slight a burden as possible on the landowner. See Civil Code, § 806; *Romero v. Shih* (2022) 78 Cal.App.5th 326 (review granted); *Zissler v. Saville* (2018) 29 Cal.App.5th 630, 638; *McBride v.*

Smith (2018) 18 Cal.App.5th 1160, 1174; *Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1422-1423; *Silacci v. Abramson* (1996) 45 Cal.App.4th 558, 562-564.

Plaintiff does not claim to have any sort of recorded easement, and also does not claim to have any type of implied easement – even though implied easements for utility providers is relatively common. See, *e.g.*, *Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1306-1307; *Salvaty v. Falcon Cable Television* (1985) 165 Cal.App.3d 798, 804. Instead, Plaintiff claims to have a nonexclusive easement acquired by prescription, which is an easement acquired by use and occupancy. Civil Code, § 1007. To establish the elements of a prescriptive easement, PG&E must establish by clear and convincing evidence that it has made specific and definable use of some portion of Defendant's property (see CRC 3.1151) for at least five years which was (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the landowner; and (4) under claim of right. *Husain v. California Pacific Bank* (2021) 61 Cal.App.5th 717, 725-726; *Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032.

Defendant concedes the first two elements of a prescriptive easement (open and continuous use for at least five years), but strongly objects on the ground that PG&E's use was never "hostile" because Defendant allowed PG&E unfettered access until Defendant formed the opinion that PG&E caused too much damage – which, as noted, would be a clear violation of any prescriptive easement. The concept of hostility is synonymous with adversity, and is loosely defined as use without any express or implied recognition of the owner's property rights, or in defiance of the owner's property rights. Stated another way, 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. *Husain* at 726; *McBride* at 1181; *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252 [adverse use means that the claimant's use was made without the explicit or implicit permission of the landowner.]

Defendant contends that he "always gave permission" for PG&E to enter, but that assumes PG&E actually asked for permission. The 05/27/22 letter from PG&E is rather explicit that, at least in 2022, PG&E did not believe it needed Defendant's "permission" to enter. To show hostility for at least 5 years, PG&E needs more. PG&E has not met its burden by clear and convincing evidence to show a prescriptive easement, but on an application for a preliminary injunction PG&E only needs to establish that is has "some possibility" of prevailing on the issue, and on that level PG&E has shown some possibility of demonstrating a prescriptive easement, and if there is a prescriptive easement than Defendant's unilateral decision to block PG&E's access altogether would certainly qualify as an unreasonable interference with the easement. **It is still unclear on these facts whether PG&E has a prescriptive easement over any portion of Defendant's property because there is no competent evidence provided by either side as to the custom and practice utilized by PG&E when accessing Defendant's property prior to 2022. By allowing supplemental briefing, this Court expected to see evidence from PG&E that it acquired its easement adversely sometime during the last 50 years by making five consecutive years of adverse use. To date, the only reference thereto is counsel's argument.**

This evidence would have gone both to the existence of the easement, and to the type of access typically used pursuant to the easement. Since PG&E failed to provide this evidence, the only reasonable inference to draw is that no such evidence exists. See Evidence Code §412.

Setting aside the question of whether *any* easement exists, there is still the reality that PG&E used to access its equipment there without much fanfare for the better part of 50 years, and has demonstrated a bona fide need to do so now (even though Defendant claims that PG&E has hundreds of other poles in greater distress). Assuming PG&E is entitled to some access, even if under the public safety rubric alone, the question is how much of the existing barrier must be adjusted. As noted, PG&E claims that it is physically unable to gain access to its equipment, but Defendant says just the opposite. **Rather than accept either side's representation of access, this Court will secure Plaintiff's consent to enter his property and schedule, with input from both sides, a site inspection. As is the custom with site inspections, the only persons this Court will hear from are counsel for Plaintiff, a person designated by Plaintiff to speak about access to Defendant's property, and Defendant himself. This Court will *not* entertain *any* oral argument during the site inspection about easement rights, defensible space, high voltage setbacks, or the like. The only purpose for the site inspection is to better understand Plaintiff's claim that the barriers bar access, and Defendant's claim to the contrary. As noted, even if an easement does exist, the scope of such easement would be for "reasonable access" to the equipment, not "perfect access to the detriment of Defendant's right to protect his property from trespassing/littering."**

Defendant had every right to barricade his own property vis-à-vis the world at large. Thus, an order that he remove all of the barricade is *mandatory* – and difficult to justify on the cold record here. Defendant explains that most of the barriers were to keep out trespassers and trash dumpers, not PG&E. Nevertheless, assuming an easement exists, PG&E is entitled to a prohibitory injunction barring Defendant from interfering with PG&E's reasonable access to its electrical equipment, *which apparently occurred through a swing gate on Defendant's property.* Although PG&E does not want to replace the barriers because (1) it is a lot of work, (2) PG&E will need access again in the future and (3) PG&E does not want to appear complicit in anything that might violate the defensible space rules, this Court requires a site inspection to better understand what might need to be moved, and what does not, in order for PG&E to enjoy reasonable (again, not "perfect") access. If the swing gate provides enough access for PG&E, and PG&E used to access the equipment through said swing gate, an order that the gate be opened for PG&E would be prohibitory, not mandatory. Either way, given the claims by Defendant, PG&E will still be required to post an undertaking pursuant to CCP §529 in the amount of $35,000.00, or a cash deposit per CCP, § 995.710. See *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545, 555; *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day prior to the scheduled hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 2 is (209) 588-2382. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

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7. CVL63541 Rawhide Investment Co v. Brimage (Pate)
Hearing on: Motion to Lift Stay
Moving Party: Plaintiff
Tentative Ruling: Deny without prejudice

This is a residential Unlawful Detainer (UD) action involving a disputed claim of ownership over the subject residence (a mobile home). Before the Court this day is the putative landlord's motion to lift the stay and proceed to a trial in the UD action. The stay was put in place on March 23, 2021 based upon title issues raised in both this and the related action (CV63646).

In UD actions, the principal issue is the tenant's right to continued possession of the disputed premises, along with incidental damages resulting therefrom. In the usual case, the tenant is estopped from challenging the landlord's legal ownership of the property because (1) the tenant previously agreed to pay the landlord rent; and (2) if some third party has title to the property, the tenant nonetheless has no right to possession. However, a tenant is allowed to challenge the landlord's title in a UD action if the defense, if established, would result in the tenant retaining possession of the premises. See *Coyne v. De Leo* (2018) 26 Cal.App.5th 801, 818; *Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385. Here, Defendant contends that she is the equitable owner of the mobile home, having already paid for the home before the seller also sold it to Rawhide. According to Defendant, Foust had no title to give Rawhide since that title had already been given to Defendant. Moreover, Plaintiff claims that Rawhide is not entitled to "BFP" status because Rawhide knew or should have known that Foust was not the owner since Rawhide accepted rent payments from Defendant (and the mobile home park rules provide that only the legal owner can make rent payments). If Defendant-tenant turns out to be righteous owner of the property, she would be entitled to remain in possession. Thus, the question of title is still very much in play in the UD action. The reason the UD action was stayed, however, was because the parties would have an easier time dealing with discovery and the like in the civil action. This Court entertained the idea of consolidating both cases for all purposes, but instead opted for the stay. The stay is still warranted.

Rawhide is correct that the related civil action (CV63646) does not presently contain a quiet title cause of action (see Minute Order dated June 23, 2022). However, that is not the sole lynchpin for the stay order. The operative pleading in the related case includes causes of action against Rawhide for such things as fraud/deceit, breach of contract, abuse of process, unfair business practices, and intentional infliction of emotional distress. Plaintiff specifically seeks relief in the form of a certificate of ownership for the mobile home (see SAC, page 13). Since both the fraud claim and the UCL claim could support the equitable imposition of a constructive trust upon the mobile home, the absence of a formal quiet title cause of action does not remove from the case the issue of equitable ownership. See B&P Code, §§ 17203, 17535 *Murphy v. Crowley* (1903) 140 Cal. 141, 149 [equitable ownership can support order for delivery of possession]; in accord, *Felger v. Coward* (1868) 35 Cal. 650, 651; *People v. Orange County Charitable Servs.* (1999) 73 Cal.App.4th 1054, 1078 [constructive trust via UCL]; *Segura v. McBride* (1992) 5 Cal.App.4th

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1028, 1037-1039 [equitable owner entitled to damages since property already sold to BFP]. If Plaintiff can establish equitable ownership, she would be entitled to both damages and an additional claim for wrongful eviction – unless Rawhide still has the mobile home, and can return possession. The purpose of a stay is to reduce the amount of ongoing litigation, and lifting this stay would serve just the opposite end.

Finally, although this Court declined to consolidate for all purposes the UD action and the civil action, it is now more clear to this Court that consolidation is necessary. Pursuant to CCP, §1048(a), "when actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Trial courts have wide discretion in this regard, and are to be guided by the precept that consolidation is supposed to enhance trial court efficiency and avoid inconsistency and undue confusion. *Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 979-980; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 964. Both the UD action and the civil action rise and fall on the same concept, to wit: does Ms. Pate have an ownership interest in the mobile home?

CV63646 is hereby ordered to be consolidated for all purposes with CVL63541, the former to serve as the lead case. See *Martin-Bragg, supra,* at 384-392.

8. CV61981 Vaughn v. Franco

Hearing on: N/A – Debtor's Exam
Moving Party: N/A
Tentative Ruling: N/A

Debtor was ordered to appear for examination this date and time by order dated July 22, 2022.