

Tentative Rulings for June 9, 2022
Department 501

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

20CECG03047	<i>Nicole Windfield v. FCA US, LLC</i> is continued to Wednesday, June 29, 2022 at 3:30 p.m. in Department 501
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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(35)

Tentative Ruling

Re: ***Real v. Vested Enterprises, Inc. et al.***
Superior Court Case No. 21CECG02679

Hearing Date: June 9, 2022 (Dept. 501)

Motion: by plaintiff Daniel Real for an order compelling initial responses from defendant Vested Enterprises, Inc. to form interrogatories, set one, special interrogatories, set one, and request for production of documents, set one, and sanctions

by plaintiff Daniel Real for an order compelling initial responses from defendant Zachary Mikal Adams to request for production of documents, set one, and sanctions

Tentative Ruling:

To grant each of the motions to compel initial responses.

Within ten (10) days of service of the order by the clerk, defendant Vested Enterprises, Inc., shall serve verified responses, without objections, to Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One, and produce all documents responsive to the Request for Production. To grant monetary sanctions in the amount of \$1,180 against defendant Vested Enterprises, Inc., in favor of plaintiff. Within thirty (30) days of service of the order by the clerk, defendant Vested Enterprises, Inc., shall pay sanctions to plaintiff's counsel.

Within ten (10) days of service of the order by the clerk, defendant Zachary Mikal Adams shall serve verified responses, without objections, to Request for Production of Documents, Set One, and produce all documents responsive to the Request for Production. To grant monetary sanctions in the amount of \$320 against defendant Zachary Mikal Adams, in favor of plaintiff. Within thirty (30) days of service of the order by the clerk, defendant Zachary Mikal Adams shall pay sanctions to plaintiff's counsel.

To direct plaintiff to remit filing fees of \$120 for the two additional motions considered, within twenty (20) days of service of the order by the clerk.

Explanation:

Defendant Vested Enterprises, Inc.

On November 18, 2021, the discovery at issue was served on defendant Vested Enterprises, Inc. (Declaration of Colin Jones [Interrogatories], ¶ 2, and Ex. 1; Declaration of Colin Jones [Request for Production of Documents], ¶ 2, and Ex. 1.) As of the filing of the motions to compel, no responses have been served. (Jones Decl. [Interrogatories], ¶ 3; Jones Decl. [Request for Production of Documents], ¶ 3.) Plaintiff now seeks an order to compel responses.

Accordingly, an order compelling defendant Vested Enterprises, Inc., to provide initial responses is warranted. (Code Civ. Proc. §§ 2030.290, subd. (b), 2031.300 subd. (b).) All objections are waived. (*Id.* §§ 2030.290, subd. (a), 2031.300, subd. (a).) Sanctions are mandatory unless the court finds that the party acted “with substantial justification” or other circumstances that would render sanctions “unjust.” (*Id.*, §§ 2030.290, subd. (c), 2031.300, subd. (c).) The court finds no circumstances that would render the mandatory sanctions unjust. Plaintiff’s request for monetary sanctions is granted against defendant Vested Enterprises, Inc., but in the reduced amount of \$1,180.

Defendant Zachary Mikal Adams

On November 18, 2021, the discovery at issue was served on defendant Zachary Mikal Adams. (Declaration of Colin Jones, ¶ 1, and Ex. 1.) As of the filing of the motions to compel, no responses have been served. (*Id.*, ¶ 2.)

For the same reasons, an order compelling defendant Zachary Mikal Adams to provide initial responses is warranted. All objections are waived. The court finds no circumstances that would render the mandatory sanctions unjust. Plaintiff’s request for monetary sanctions is granted against defendant Zachary Mikal Adams, but in the reduced amount of \$320.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT **on** 6/5/2022.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Doe v. Rowell**
Superior Court Case No. 20CECG03668

Hearing Date: June 9, 2022 (Dept. 501)

Motion: by Defendant Richard Rowell to quash subpoena and stay discovery

Tentative Ruling:

To deny as moot.

Explanation:

On December 8, 2021, both defendants filed separate motions essentially seeking to stay discovery until the parties' respective pleadings had been settled. In the time since the filings, the court has overruled both defendants' demurrers and both defendants have filed answers (moving defendant Rowell filed his answer on March 22, 2022), and co-defendant Kings Canyon Unified School District has withdrawn its motion to quash (see filing April 6, 2022). Defendant Rowell's motion to quash, however, remains on calendar, yet its premise has essentially expired considering the overruled demurrers and answer filed. (See Mtn. p. 5:2-3 [requesting a stay only until the demurrer is ruled on].)

Therefore, defendant Rowell's motion to quash and stay discovery appears moot, and is thus denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 6/8/2022.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Reich v. Srabian, et al.***
Superior Court Case No. 21CECG02078

Hearing Date: June 9, 2022 (Dept. 501)

Motion: Defendants Morris S. Srabian and Lucille L. Srabian's Demurrer to the Complaint

Tentative Ruling:

To sustain, with leave to amend, the demurrer to the first, second and third causes of action, and to overrule the demurrer to the fourth, fifth and sixth causes of action as to defendant Lucille L. Srabian. To abate the action as to defendant Morris S. Srabian until a decision is made by the administrator in the probate proceeding to accept or reject plaintiff's creditor claim.

Plaintiff is granted 20 days' leave to file a First Amended Complaint. The time to file such pleading will run from service by the clerk of the minute order. All new allegations in a First Amended Complaint are to be set in **boldface** type.

Explanation:

Demurrer to the First Cause of Action for Breach of Contract:

Defendants Morris S. Srabian and Lucille L. Srabian (together, the "Srabian Defendants") demur to the first cause of action for breach of contract, on the grounds that the Complaint fails to state sufficient facts to constitute a cause of action, the pleadings are uncertain and it cannot be ascertained from the pleading whether the contract is written, oral or implied by conduct. "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." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993.) The Srabian Defendants argue that the terms of the contract are neither sufficiently pled in the Complaint, nor is the contract attached to the Complaint.

Plaintiff contends that the Complaint sufficiently pleads the legal effect of the agreement and that in an abundance of caution, plaintiff did not attach the contract so as to protect the Srabian Defendants' attorney-client privilege. "In order to plead a contract by its legal effect, plaintiff must allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions." (*Ibid* [internal citations omitted].) Although the Complaint identifies the subject contract to be an attorney-client "written retainer agreement" (Compl., ¶ 14.), the Complaint fails to adequately describe the consideration exchanged for plaintiff's legal services, i.e., whether the payment was based on an hourly rate or contingency fee; the amount of plaintiff's hourly rate; whether costs of litigation are to be paid by the client, etc. Plaintiff's allegation that the Srabian

Defendants owe \$294,955.84 as of on or about April 30, 2019, (Compl., ¶ 14, 17, 19, 21.) is insufficient to set out the legal effect of the agreement.

Plaintiff also argues that the demurrer should be denied because he has cured the defect by agreeing to file an amended complaint with the subject contract attached. Since no such amended complaint has been lodged with the court at this time, the court intends to sustain the Srabian Defendants' demurrer to the first cause of action with leave to amend.

Demurrer to the Second Cause of Action—Common Count for Work, Labor and Services Rendered:

The demurring parties argue that plaintiff fails to allege sufficient facts to plead all the requisite elements of the alleged cause of action—common count for work, labor and services rendered ("common count for services rendered"), and that the common count is redundant. However, the Srabian Defendants fail to elaborate as to which elements plaintiff has failed to sufficiently plead. Although the Srabian Defendants concede that "the complaint is based on a purported written contract [rather] than the action for quantum meruit... [sic]" (Demurrer, 4:6-7 [brackets added].), the case law cited in support of the Srabian Defendants' argument only sets forth the elements required in a claim to recover under a quantum meruit theory. (*Ochs v. PacificCare of California* (2004) 115 Cal.App.4th 781, 794 ("Ochs").) Further, the court in *Ochs* concluded that the causes of action for common counts for services rendered and quantum meruit failed on the ground that the facts specific to that case rendered recovery to be inappropriate as it would frustrate the law, which is not implicated here. (*Ibid.*)

"[T]he only essential allegations are (1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment." (4 Witkin, Cal. Procedure (6th ed. 2022) Plead, § 565 [internal citations omitted, brackets added]; See also *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) Here, the complaint alleges "[t]he Srabian Defendants became indebted to plaintiff in the sum of \$294,955.84 for work, labor, and services including fees and costs performed and paid by [p]laintiff for the Srabian Defendants, plus finance charges of 1.5% per month on that sum." (Compl., ¶ 17 [brackets added].) It also incorporates all the allegations of plaintiff's breach of contract cause of action, including the allegations that plaintiff represented the Srabian Defendants in a separate action: *Srabian v. Chiarito, Triangle Truck Center, et al.*, Superior Court of California, County of Fresno, Case No. 15CECG00439. (Compl., ¶ 7-8.) Thus, the complaint pleads sufficient facts to establish the requisite elements to allege a cause of action for a common count for services rendered.

However, "if plaintiff is not entitled to recover under one count in a complaint wherein all the facts upon which his demand is based are specifically pleaded, it is proper to sustain a demurrer to a common count set forth in the complaint, the recovery under which is obviously based on the set of facts specifically pleaded in the other count." (*Hays v. Temple* (1937) 23 Cal.App.2d 690, 695; see also *McBride v. Boughton* (2004) 123 Cal.App.4th 397, 394; *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 459-460.) As previously discussed, the common count cause of action is based upon the same facts as the breach of contract cause of action. Thus, since plaintiff's breach of contract

cause of action is defective, the court intends to sustain the Srabian Defendants' demurrer to the second cause of action, with leave to amend.

Demurrer to the Third Cause of Action – Account Stated:

The Srabian Defendants contend that plaintiff has failed to alleged sufficient facts to establish all of the requisite elements for a cause of action for an account stated. "The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. [Citations.]" (*Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491 quoting *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600.) The Srabian Defendants contend that the complaint fails to allege facts establishing: (1) the existence of a debtor and creditor relationship between the Srabian Defendants and plaintiff; and (2) an express agreement between the parties on the amount due (i.e., \$294,955.84.).

- Existence of a Debtor-Creditor Relationship:

"An account stated is an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing." (*Ibid.*) "The bill of an attorney for services, like any other bill, may under proper circumstances and conditions be the subject of an account stated." (*Trafton v. Youngblood* (1968) 69 Cal.2d 17, 25 [internal citations omitted].) "However, since accounts stated were intended to preserve and protect legitimate demands but not to create obligations independent of prior indebtedness, the rendering of an account, although not objected to, cannot create a liability where no liability existed before." (*Id.*, 26 [internal citations omitted].) Thus, to plead the existence of a debtor and creditor relationship, the complaint must allege facts showing that the Srabian Defendants were indebted to plaintiff prior to the creation of the account stated.

Here, the Complaint alleges that on or about April 30, 2019, an account stated was made in writing by and between plaintiff and the Srabian Defendants, and on such statement a balance of \$294,955.84 was found due by the Srabian Defendants. (Compl., ¶ 19.) Further, prior to April 30, 2019, plaintiff would regularly bill the Srabian Defendants for the legal services rendered (Compl., ¶ 9.), and the Srabian Defendants paid their bills until sometime in early 2018. (Compl., ¶ 9-10.) Since plaintiff has pled facts sufficient to show the Srabian Defendants were indebted to plaintiff, prior to the establishing of the account stated, the Complaint sufficiently alleges the existence of a debtor and creditor relationship between the Srabian Defendants and plaintiff.

- Express Agreement on the Amount Due:

As plaintiff points out, "[t]he agreement of the parties necessary to establish an account stated need not be express and frequently is implied from the circumstances. In the usual situation, it comes about by the creditor rendering a statement of the account to the debtor. If the debtor fails to object to the statement within a reasonable time, the law implies his agreement that the account is correct as rendered." (*Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 666 [brackets added].) Here, plaintiff alleges that on or

about April 30, 2019, “an account was stated in writing by and between [p]laintiff and the Srabian Defendants, and on such statement a balance of \$294,955.84 was found due from the Srabian Defendants to [p]laintiff, and the Srabian Defendants did not object to the balance stated.” (Compl., ¶ 19 [brackets added].) Although it is alleged that the Srabian Defendants did not object to the balance stated, it is not sufficiently clear by the language of plaintiff's allegations, whether the statement was actually rendered to the Srabian Defendants so as to provide them with the opportunity to make an informed objection. As a result, plaintiff has failed to state sufficient facts to state a cause of action for an account stated. Thus, the court intends to sustain the demurrer to the third cause of action, with leave to amend.

Demurrer to the Fourth Cause of Action—Actual Fraud Under the Uniform Voidable Transaction Act:

The Srabian Defendants demur to the fourth cause of action for actual fraud pursuant to the California Uniform Voidable Transaction Act (“UVTA”) on the grounds of misjoinder of parties and failure to state a cause of action.

As a preliminary matter, despite the fact that the notice of demurrer and demurrer both state that the ground for the Srabian Defendants' demurrer is for misjoinder of parties, it appears the Srabian Defendants has incorrectly used the term “misjoinder” synonymously with the term “nonjoinder.” In actuality, the Srabian Defendants' argument is that plaintiff has failed to join a necessary party to the action—Rene Elijo Guarjardo. Since plaintiff's response to the demurrer addresses the merits of the Srabian Defendants' challenge of nonjoinder, the court will treat plaintiff's response on the merits as a waiver of the insufficient or defective notice of demurrer. (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7 [The court found that the opposing parties' appearance at the hearing and his opposition to the motion on its merits constituted a waiver of the defective notice of motion.])

“A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.”

(Code Civ. Proc., § 389, subd. (a).)

The Srabian Defendants contend that Ms. Guarjardo must be joined as a defendant in the action because the Complaint alleges “that Defendant Lucille Srabian engaged in actual fraud and fraudulently conveyed the real property to [Ms. Guarjardo].” (Demurrer, 4:23-25.) The Srabian Defendants further argue that it is impossible for plaintiff to recover from Ms. Guarjardo in this action unless she is joined as

a party. However, plaintiff argues that Ms. Guarjardo need not be joined as a defendant in these proceedings, because, although the Complaint alleges that the transfer of the real property located at: 2235 East Normal Avenue, Fresno, CA 93703 ("East Normal Property") from the Srabian Defendants to the Morris S. Srabian and Lucille L. Srabian Revocable Living Trust Agreement Dated August 20, 2009, as amended and restated on May 14, 2019 (the "Srabian Trust") is fraudulent, it does not allege the *subsequent transfer* of the East Normal Property from the Srabian Trust to Ms. Guarjardo to be the same. Plaintiff points out that the Complaint does not seek recovery from Ms. Guarjardo or any other bona fide third party, and only seeks a voidance of the transfers of properties from the Srabian Defendants to the Srabian Trust and for the sums paid to the Srabian Trust by any bona fide third parties. A review of the plain language of the Complaint shows that plaintiff's argument is persuasive. Since the demurring parties have not sufficiently shown that Ms. Guarjardo is any of the persons referenced in Code of Civil Procedure, section 389, subdivision (a), nor is it apparent by the face of the Complaint that she is such persons, the court finds the nonjoinder challenge to be unpersuasive.

Next, the Srabian Defendants argue that the Complaint fails to set forth the elements required to state a UVTA cause of action based on the transfer of the East Normal Property from the Srabian Trust to Ms. Guarjardo and that such cause of action cannot be asserted against her. However, these arguments are inconsequential, as it is evident by the face of the Complaint that the conduct giving rise to the fourth cause of action are the plaintiff's allegations pertaining to the fraudulent transfers from the Srabian Defendants to the Srabian Trust. (Compl., ¶ 22-29.)

The Srabian Defendants also contend that the Complaint fails to state facts showing that the Srabian Defendants believed that they would not be able to pay, and that plaintiff was harmed.

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows: [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor. [¶] (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either: [¶] (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction. [¶] (B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(Civ. Code, § 3439.04, subd. (a) [brackets added].)

Here, plaintiff alleges that the Srabian Defendants transferred the properties to the Srabian Trust with actual intent to hinder delay, or defraud their creditors, and that the properties were substantially all of the Srabian Defendants' assets, despite owing a balance (\$294,955.84) to plaintiff. (Compl., ¶ 23-27.) The Complaint further alleges that the value of consideration received for these transfers was not reasonably equivalent to the value of the assets transferred. (Compl., ¶ 27.) The allegation that the *subsequent*

transfer of the East Normal Property from the Srabian Trust to Ms. Guarjardo resulted in valuable consideration has no bearing on the consideration exchanged for the first transfer from the Srabian Defendants to the Srabian Trust. Although there is no allegation that the Srabian Defendants believed that they would be unable to pay the debt owed to plaintiff, this allegation is unnecessary as plaintiff has alleged that the transfers of the properties were substantially all of the Srabian Defendants' assets. (Civ. Code, § 3439.04, subd. (a)(2)(A), (a)(2)(B) ["...the debtor either: ... [¶] [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction... [or] [¶] [i]ntended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." brackets added].)

Also, plaintiff has alleged harm within the meaning of the UVTA. "A transfer in fraud of creditors may be attacked only by one who is injured thereby. Mere intent to delay or defraud is not sufficient; injury to the creditor must be shown affirmatively. In other words, prejudice to the plaintiff is essential. It cannot be said that a creditor has been injured unless the transfer puts beyond [her] reach property [she] otherwise would be able to subject to the payment of [her] debt." (*Mehrtash v. Mehrdash* (2001) 93 Cal.App.4th 75, 80 [brackets in original, internal citations omitted].) Here, the Complaint alleges that the Srabian Defendants transferred the properties into the Srabian Trust (Compl., ¶ 25-26.), which plaintiff argues, places the properties outside of his reach for payment of the debt. Thus, plaintiff has adequately alleged injury.

The Srabian Defendants argue that a UVTA claim is unavailable to plaintiff as he is not a judgment creditor. A "'[c]reditor' means a person that has a claim..." (Civ. Code., § 3439.01, subd. (c) [brackets added].) A "claim" "...means a right to payment, whether or not the right is reduced to judgment..." (*Id.*, subd. (b).) Thus, the Srabian Defendants' argument is unpersuasive.

The Srabian Defendants also argue that plaintiff has not pled a necessity for the avoidance of the transfers, as a money judgment is available to plaintiff. As discussed above, since the Complaint alleges that the properties were substantially all of the Srabian Defendants' assets, a money judgment against the Srabian Defendants would be insufficient to allow plaintiff to reach the properties transferred to the Srabian Trust.

Thus, the court intends to overrule the demurrer to the fourth cause of action.

Demurrer to the Fifth Cause of Action—Constructive Fraud Under the UVTA:

The moving parties again argue that Ms. Guarjardo must be joined to the action, that a UVTA cause of action cannot be asserted against Ms. Guarjardo, that the Complaint fails to allege facts showing plaintiff's injury, and that plaintiff has not pled a necessity for the avoidance of the transfers. For the same reasons set forth above, the court intends to overrule the demurrer to the fifth cause of action.

Demurrer to the Sixth Cause of Action—Declaratory Relief:

The Srabian Defendants demur to the sixth cause of action on the grounds that the issue alleged in the Complaint will be determined by the underlying action.

"Generally, an action in declaratory relief will not lie to determine an issue which can be determined in the underlying ... action. The relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues." (*California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624 [internal citations omitted].) "Under section 1061 of the Code of Civil Procedure the court may refuse to exercise the power to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances. The availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief. The refusal to exercise the power is within the court's legal discretion and will not be disturbed on appeal except for abuse of discretion." (*Ibid* [internal citations omitted].)

The Srabian Defendants argue that declaratory relief is unnecessary here because a monetary judgment is adequate relief. Specifically, if it is determined that the Srabian Defendants owe plaintiff a monetary amount that was paid to defendant U.S. Legal, Inc. ("U.S. Legal") for court reporter services, then compensatory damages in that amount paid may be awarded to plaintiff. However, plaintiff contends that declaratory judgment is necessary here, as there is an outstanding balance of \$19,921.31 owed to U.S. Legal and a determination is necessary to ascertain the actual debtor(s) to U.S. Legal. Plaintiff alleges that although the agreement for court reporter services was made between the Srabian Defendants and U.S. Legal, U.S. Legal has sought payment of these services from plaintiff. On the other hand, the Srabian Defendants argue that the instant action will serve to determine such debtor. Since it is not alleged that the amount the Srabian Defendants owe to plaintiff incorporates the amount owed to U.S. Legal, and it is not alleged that plaintiff and U.S. Legal are either the same or an affiliated entity, it does not appear that this action would serve to determine the debtor to U.S. Legal's claim without plaintiff's request for declaratory relief. Thus, the court intends to overrule the demurrer to the sixth cause of action.

Demurrer to the Entire Complaint by Defendant Morris Srabian:

The Srabian Defendants additionally demur to the entire complaint as it is alleged against Morris S. Srabian, on the grounds that since Morris S. Srabian is deceased, plaintiff's claim is barred by the applicable statute of limitation and premature as the probate court has not yet rejected plaintiff's claim.

If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(Code Civ. Proc., § 366.2, subd. (a).)

The Srabian Defendants also contend that plaintiff's action against Morris S. Srabian is premature, as plaintiff's creditor claim against Morris S. Srabian's estate in probate court has not yet been rejected. "An action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part and the claim is rejected in whole or in part." (Prob. Code, § 9351.) Plaintiff does not dispute this fact, but requests leave to "replead" his claim against the decedent after an administrator for the estate has been appointed and that administrator has been afforded an opportunity to review and accept or reject plaintiff's creditor claim. Where a demurrer is sustained on the ground that there is another action pending between the same parties on the same claim, the court is empowered to retain jurisdiction, and thus may stay (abate) the present proceedings pending the outcome of the other action. (Code Civ. Proc., § 597, *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 789.) Thus, the court intends to abate action against decedent Morris S. Srabian until a decision is made by the administrator in the probate proceeding.

Tentative Ruling

¹ The Srabian Defendants' request for judicial notice of Morris Srabian's death certificate, Exhibit A, is granted. The court may take judicial notice of official acts of the legislative, executive, and judicial departments of a state and of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (c), (h).)

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(36)

Tentative Ruling

Re: ***In Re: Mountain View Cemetery Improvement Association***
Superior Court Case No. 22CECG01058

Hearing Date: June 9, 2022 (Dept. 501)

Motion: Petition for Vacation of Minor Cemetery Roadways and
Pathways for Replat into Plots

Tentative Ruling:

To grant. (Health & Safety Code, § 8701, *et seq.*)

Explanation:

The petition satisfies all the statutory requirements. Petitioner has shown that all or part of the cemetery was established prior to August 14, 1931, and that a majority of the plots have "been sold without the owner having made provision for the establishment of an adequate endowment care fund for its [care and maintenance]." (Health & Safety Code, § 8701 [brackets added].) The declarations of Elaine Tosh and David A. Roberts set forth that petitioner has complied with the statutory notice requirements by (1) posting the proposed change at its front office and at all 5 roadways it seeks to replat; (2) posting the notice of the hearing for 3 consecutive weeks in a newspaper of general circulation near the cemetery in Fresno County; and (3) adhering to the requisite language prescribed by Health and Safety Code, section 8709, subdivisions (a)-(e) in the notice. (Health & Safety Code, sections 8707, 8708, 8709 subds. (a)-(e).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 6/8/2022.
(Judge's initials) (Date)