Dept. 1
Civil Law and Motion Tentative Rulings for Friday, April 25, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CV65851** **Jacobs v. County of Tuolumne**
   Hearing on: Attorney Withdrawal
   Moving Party: Plaintiff's Counsel
   Tentative Ruling: Grant

This is a personal injury action involving an alleged dangerous condition inside the restroom in Facility A inside the Sierra Conservation Center. Plaintiff, an inmate, claims that a lightbulb above his head exploded while he was in a stall in the lavatory, raining down shards of glass. The action was commenced more than a year ago, and yet there have been no appearances made by any named defendant. Before the Court this day is a renewed motion by plaintiff's counsel to withdraw from representation. The previous concerns have been cured, and the current motion contains sufficient information to warrant withdrawal – which shall be effective upon service of the signed order.

2. **CVL66640** **Jensen v. Wagner**
   Hearing on: Motion to Consolidate
   Moving Party: Plaintiff
   Tentative Ruling: HEARING REQUIRED

This is a real property dispute involving a disputed strip of land. Before the Court this day is a motion by plaintiff to consolidate this case with another case involving the same defendant and another strip of land owned by a different person.

There is no question that CVL66640 and CVL66764 are "related" and that a deposition taken in one case ought to be available for use in the other. However, the motion – which is unopposed – does not provide enough information for why consolidation makes sense, let alone how it would avoid jury confusion.

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." Trials courts have wide discretion in this regard, 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. However, "it is possible that actions may be thoroughly related in the sense of having common questions of law or fact, and still not be consolidated, if the trial court, in the sound exercise of its discretion, chooses not to do so." *Askew v. Askew* (1994) 22 Cal.App.4th 942, 964.

Here, the moving papers offer little guidance as to why consolidation makes sense. Although "both plaintiffs believe that [defendant's] use of their properties is an act of trespass" and "are related to his coming and going to a mine claim" (see Daher Decl Para 3-4), the ownership interests in the respective parcels are not necessarily intertwined. In other words, easement use plays a central role in land rights, and it is certainly possible that defendant's use of one parcel is different from his use of the other. Counsel all but concedes that easement issues may turn on facts unique to each parcel (see Daher Decl Para 5). In addition, since CVL66640 and CVL66764 are both *limited* civil actions, subject to stringent caps of discovery, consolidating them for all purposes actually handcuffs the plaintiffs in a way which makes little sense.

Court is willing to hear from the parties, but is otherwise unconvinced that consolidation will help streamline resolution.

3. **CV65497** **Kolberg v. Estate of Walsh**
   Hearing on: Demurrer to FAC
   Moving Party: Defendant
   Tentative Ruling: Overruled; answer in 5 days

This is a family dispute regarding equitable ownership of certain real property located on Lynn Lane in Sonora, or a monetary equivalent thereto. The property was owned by John Walsh, who died on 05/17/2021. His brother James commenced an *intestate* probate proceeding on John's behalf (see PR12140), despite John allegedly having a will leaving everything to his non-relative live-in caregiver (see PR12029). During that administration, James died, leaving his own intestate estate to be administered (see PR12267). Meanwhile, John's live-in caregiver (Christi) filed this civil action claiming that John promised her that if she moved in and provided him with care/comfort in his waning years, that upon his passing he would gift her his home. Since James caused that property to be inventoried as part of John's *intestate* estate, the clear implication here is that the home would eventually go to family, not Christi.

Before the Court this day is an unopposed demurrer directed at Christi's First Amended Complaint filed 01/31/2025. The same issues remain as have plagued this case from its inception, to wit: Christi's refusal to hire a lawyer to help her navigate a complex legal landscape, including the basic need to present to the Court a readable operative pleading. This new version, which exceeded this Court's permissible length by 2x, is difficult to follow, but alleges the same basic theory of a broken promise to assume the role of decedent's care giver in exchange for a testamentary gift. In light of the fact that this Court cannot justify sustaining the demurrer *without* leave to amend since it is evident that plaintiff is alleging some legal theory for recovery, the only way to get this case moving is to overrule the demurrer and get the parties focused on summary adjudication. This case has been pending for almost two years

and to still be in the pleading stage is a loss of valuable time for everyone. However, as a reminder of the things wrong with the case as pled:

1. Pursuant to Civil Code §1624(a), an *oral* promise of a testamentary gift of real property is not enforceable absent a material change in position resulting in substantial hardship and unconscionable injury. See *Monarco v. Greco* (1950) 35 Cal.2d 621, 623-624; *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 198-199; *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044; *Porporato v. Devincenzi* (1968) 261 Cal.App.2d 670, 678-679.

2. Pursuant to Probate Code §21380(a), donative transfers by a dependent adult to any person proving in-home health or social services for remuneration is presumed to be the product of fraud or undue influence. This presumption can only be rebutted with clear and convincing evidence to the contrary. Since John was over the age of 65, the averments alone establish that the adverse presumption likely attaches. See, *e.g., Bernard v. Foley* (2006) 39 Cal.4th 794, 809-810; *Robinson v. Gutierrez* (2023) 98 Cal.App.5th 278, 284-288; *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128, 1141-1144; *Estate of Lira* (2012) 212 Cal.App.4th 1368, 1371-1375.

3. Broken promises to convey interests in real property post-mortem constitute "claims" by "creditors" of the estate, especially if the claimant is seeking the monetary value of the real property interest. See Probate Code §9000(a) and (b); in accord, *Allen v. Stoddard* (2013) 212 Cal.App.4th 807, 813-815; *Estate of Zeigler* (2010) 187 Cal.App.4th 1357, 1365; *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 555; *Stewart v. Seward* (2007) 148 Cal.App.4th 1513, 1515; *Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 829-834. Plaintiff was required to exhaust the administrative procedure by first filing a creditor claim in John's estate (Probate Code §9351), and then had the balance of twelve (12) months from John's death to file a lawsuit (CCP §366.3). Although some estoppel is possible, it is not easy to tell from the facts alleged. See Probate Code §9050(a); *Interinsurance Exch. of Auto. Club of Southern Calif. v. Narula* (1995) 33 Cal.App.4th 1140, 1146; in accord, *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478, 490 (1988).

4. Plaintiff generally alleges that she was lulled into a sense of complacency, causing her to forgo the filing of a creditor's claim or otherwise timely pursuing her rights vis-à-vis the alleged oral employment agreement. Generally speaking, a duty to disclose only arises when the defendant is in a fiduciary relationship with the plaintiff, when the defendant has exclusive knowledge of material facts not known to the plaintiff, when the defendant *actively* conceals a material fact from the plaintiff, or when the defendant

makes partial (ie, incomplete) representations while suppressing material portions. *Bank of America v. Superior Court* (2011) 198 Cal.App.4th 862, 870-871; *Perias v. GMAC Mortgage, Inc.* (2010) 187 Cal.App.4th 429, 434; *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336. This is precisely what plaintiff alleges. If her averments are true, James and Carolyn knew plaintiff expected to receive a gift from John and had a duty not to actively mislead her.

Demurrer overruled. Defendant to answer in 5 days.

4. **CVL66764** **Zenkewich v. Wagner**
   Hearing on: Application for Preliminary Injunction
   Moving Party: Plaintiff
   Tentative Ruling: Continued to May 2

This is a real property dispute, related to #2. Before the Court this day is an application for preliminary injunction. Because there is pending this day a motion to consolidate this case with the related action, and the related action has its own application for preliminary injunction set for May 2, judicial economy favors resetting this hearing to May 2 as well.