Tentative Rulings and Resolution Review Hearings
April 22, 2024
Department 63 (formerly Department 8)

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Per Local Rule 5.13, telephonic appearances through CourtCall (888-882-6878; courtcall.com) are generally permitted on the Law & Motion and Resolution Review calendars and can be made without leave of Court.

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8:30 a.m. – Law & Motion

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ASPIRE GENERAL INSURANCE COMPANY VS. ALLISON
Case Number: 22CVG-00899
Tentative Ruling on Order to Show Cause Re Sanctions: An Order to Show Cause Re Sanctions (hereinafter "OSC") issued on March 2, 2024, to Plaintiff Aspire General Insurance Company and Counsel (Law Offices of Todd F. Haines) for their failure to timely serve the Defendant and failure to timely prosecute the action. This litigation was filed on November 2, 2022. CRC 3.740(d) requires service in collection cases within 180 days of the filing of the complaint. No proof of service has ever been filed. The Court finds that Plaintiff is in violation of CRC 3.740(d). No response to the OSC has been filed. Without any explanation for their failure to act, the Court will impose sanctions. Sanctions in the amount of $250 are imposed against Plaintiff and Counsel. The clerk is instructed to prepare a separate Order of Sanctions. The Court confirms today's review hearing set for 9:00 a.m.

BRANDT VS. IRON MECHANICAL, INC.
Case Number: 23CV-0203763
Tentative Ruling on Motion to Compel Arbitration, Strike Class Allegations, and Stay the Action Pending Completion of Arbitration: Defendant Iron Mechanical, Inc. moves to compel Plaintiff Dylan Brandt to arbitrate his individual claims. Defendant also moves to strike all class allegations from the Complaint and to stay the matter pending arbitration. Plaintiff opposes the motion.

Request for Judicial Notice. Within the Reply, Defendant requested that judicial notice be taken in the footnotes. The first is in Footnote 1 on page 2 where Defendant requested the Court to take judicial notice that "the American Arbitration Association is one of the largest neutral arbitration services in the United State." Defendant did not specify under which section of the Evidence Code this request was being made. In Footnote 4 on page 9, Defendant requests the Court take judicial notice of the distance between Marysville, California and Sacramento County and Marysville, California and Yolo County. Defendant did not specify under which section of the Evidence Code this request is being made.

Neither request appears to fall under Evid. Code § 452(g). While the distances from Marysville to the counties could possibly fall under Evid. Code § 452(h), no supporting documentation was provided for this request as required by CRC 3.1306(c). Generally, a map would be provided in order for the Court to immediately and accurately make the distance determination. Both requests for judicial notice are denied.

Merits. As a preliminary matter, Defendant asserts that the Federal Arbitration Act applies. Plaintiff does not challenge this assertion. Defendant has presented evidence of Defendant's participation in interstate commerce. The agreement itself contains a provision that reads, "Enforcement of this agreement shall be governed by the Federal Arbitration Act." The Court finds that the FAA governs the arbitration agreement at issue.

CCP § 1281.2 requires the Court to grant a petition to compel arbitration where it determines that an agreement to arbitrate the controversy exists. "[T]he trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal. 4th 951, 972. The burden is on the moving party to prove the existence of an arbitration agreement by a preponderance of the evidence. "Because the existence of the agreement is a statutory prerequisite to granting the [motion or] petition, the [party seeking arbitration] bears the burden of proving its existence by a preponderance of the evidence." *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal. 4th 394, 413.
However, the burden of production may shift in a three-step process. First, the moving party bears the burden of producing "prima facie evidence of a written agreement to arbitrate the controversy." *Rosenthal*, *supra*, 14 Cal. 4th at p. 413. The moving party "can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature." *Bannister v. Marinidence Opco, LLC* (2021) 64 Cal. App. 5th 541. Defendant has met this burden by providing the signed arbitration agreement containing Plaintiff's signature and initials.

If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. See *Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 219. The Court notes that Plaintiff does not challenge whether the arbitration agreement was actually signed by Plaintiff or contest the authenticity of the arbitration agreement presented as evidence.

> If the court determines the agreement to arbitrate exists, it should then decide the other objections to its enforceability. Once the court has determined the agreement exists, the court must grant the petition "unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement." (§ 1281.2.)

Longwood, supra, 88 Cal. App. 4th at 219.

Plaintiff bears the burden of showing unconscionability by a preponderance of the evidence. *Peng v. First Republic Bank* (2013) 219 Cal. App. 4th 1462, 1468.

> As explained in *A & M Produce Co., supra*, 135 Cal.App.3d 473, "unconscionability has both a 'procedural' and a 'substantive' element," the former focusing on " 'oppression' " or " 'surprise' " due to unequal bargaining power, the latter on " 'overly harsh' " or " 'one-sided' " results. (Id. at pp. 486-487.) "The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Stirlen v. Supercuts, Inc., supra*, 51 Cal.App.4th at p. 1533 (*Stirlen*).) But they need not be present in the same degree. "Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves." (15 Williston on Contracts (3d ed. 1972) § 1763A, pp. 226-227; see also A & M Produce Co., supra, 135 Cal.App.3d at p. 487.) In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.

Armendariz v. Found. Health Psychcare Servs., Inc. (2000) 24 Cal.4th 83, 114.

Procedural unconscionability addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. *OTO, L.L.C. v Kho* (2019) 8 Cal. 5th 111. Oppression occurs when a contract involves lack of negotiation and meaningful choice. *Id.* Circumstances relevant to establishing oppression include but are not limited to: (1) the amount of time a party is given to consider the proposed agreement; (2) the amount and type of pressure exerted on the party to sign the proposed agreement; (3) the length of the proposed agreement and the length and complexity of the challenged provision; (4) the party's education and experience; and (5) whether an attorney assisted the party in reviewing the proposed agreement. *Id.* at 126-127.

Here, Plaintiff has presented evidence that he was paired with Defendant as part of a four-year trade school he had attended through the Air Conditioning Trade Association. Plaintiff declared that, "[he] had no choice but to work at Iron Mechanical while [he] was a student at ACTA." *Brandt Decl.* ¶ 6. Plaintiff was provided the arbitration agreement in a "large stack of paperwork and told that [he] had to complete all documents during [his] visit to Iron Mechanical's Office. *Id.* ¶ 8. Plaintiff declared that, "No one explained any of the documents that were handed to me in the large stack of paperwork, and no one was available to answer questions while I filled out the paperwork. I was not allowed to take the documents home with me to review before signing them." *Id.* ¶ 8. Plaintiff went on to declare that, "It was my understanding that I could not decline to sign or change the terms of any of the documents. I was not provided the opportunity to consult with an attorney before signing any of the documents." *Id.* ¶ 8. Plaintiff declared that "it was my understanding that if I did not sign all the paperwork put in front of me, Iron Mechanical would inform ACTA that I was not hirable and I would have been in trouble with my trade school, and could have been kicked out of the program." *Id.* ¶ 9. Plaintiff was not provided a copy of the documents he signed. *Id.* ¶ 10. Marissa Ayala, Human Resources Manager for Defendant, declared that she "instructed him to review each document before signing and to notify me if he had any questions or concerns." *Ayala Decl.* ¶ 4. Plaintiff signed each document and "had no questions about them." *Id.* ¶ 5.

Despite having the declaration from Plaintiff when drafting the Reply, Defendant did not counter Plaintiff's assertions regarding how not signing could impact his potential employment with Defendant or his completion of trade school. No evidence was presented that would lead the Court to conclude that the arbitration agreement was not required as a term of employment. Defendant did not provide evidence that Plaintiff's four years in trade school would not have been jeopardized had Plaintiff refused to sign the arbitration agreement or not be hired by Defendant. The state of the evidence is that Plaintiff believed that had he not signed the arbitration agreement, he would not have been able to work for Defendant which would negatively impact the four-year trade school he was in, possibly leading to Plaintiff being kicked out of the program.

Regarding the factors set forth in *OTO, L.L.C. v Kho,* Plaintiff was not given much time to consider the proposed agreement as it was due the same day he received it. Due to the job/apprenticeship being linked to his trade program, Plaintiff was under pressure to sign the proposed agreement. The agreement is two pages long and while not particularly complex, was confusing in that the first paragraph states that the claims "shall be resolved by binding arbitration under the National Rules for the Resolution of Employment Disputes of the American Arbitration Association." However, the last paragraph of the agreement informs Plaintiff that he can get a copy of the "AAA Employment Arbitration Rules and Mediation Procedures" at "http://www.adr.org/employment" or by contacting Human Resources. While Defendant has presented evidence that there is a link on the right side of the landing page that reads "Employment Arbitration Rules & Mediation Procedures," the agreement states that the arbitration will be pursuant to the "National Rules for the Resolution of Employment Disputes of the American Arbitration Association." The use of two different terms to describe the rules that apply make this confusing, especially to a lay person who may have never had any experience with or have knowledge of the existence of the American Arbitration Association. Plaintiff is a high school graduate who did not attend college. *Brandt Decl.* ¶ 4. An attorney did not assist Plaintiff in reviewing the proposed agreement. Under the circumstances, the Court finds that there was a moderate to high degree of procedural unconscionability.

In addition to procedural unconscionability, the Court must also consider whether any substantive unconscionability was present. Substantive unconscionability pertains to the fairness of an agreement's actual terms and to an assessment of whether these terms are overly harsh or one-sided. See *OTO, L.L.C. v Kho, supra. Armendariz v. Foundation Health Psychare Servs. Inc*. provides factors for minimum fairness, which are mutuality, a neutral arbitrator, adequate discovery, a written decision, the same relief being available in arbitration, and the costs of arbitration.

The second paragraph of the arbitration agreement requires the Employee, but not the Employer, to waive jury trial. While Defendant argues that it is implied that both parties waive jury, the agreement specifically only requires Plaintiff to waive the right to a jury. In the same section, the agreement requires that the arbitration take place in the Counties of Sacramento or Yolo. The evidence before the Court is that Plaintiff lived in Yuba County and worked in Shasta County. Requiring the employee to travel to a different county for arbitration results in some prejudice, even if minimal, to the employee. Both the jury trial waiver and venue selection make the agreement not completely mutual. The agreement, through the use of the AAA Employment Arbitration Rules and Mediation Procedures, calls for a neutral arbitrator. The inclusion of CCP § 1283.05 provides for adequate discovery. The agreement requires that the arbitrator's decision be in writing. In the section titled "PRESENTING A CLAIM, "the arbitration agreement also requires that "all common law claims (e.g., torts, contracts) must be presented to the other party not later than six (6) months after the event giving rise to the dispute." This places an arbitrary six-month deadline to apprise the other party of a claim that has a longer statute of limitations. The agreement provides that costs and fees of the arbitrator and/or arbitration service are paid by Defendant. Attorney's fees and costs are apportioned by the arbitrator pursuant to applicable statutes or each party bears their own attorney's fees and costs.

Due to a lack of mutuality and the reduction of the time for an employee to present a common law claim to Defendant, the Court finds that the agreement presents some degree of substantive unconscionability. As the Court determines this on a sliding scale, only a minimal level of substantive unconscionability can render an agreement unenforceable when the procedural unconscionability is high.

The Court finds that Plaintiff has met his burden of providing unconscionability to the level at which the agreement is rendered unenforceable. Accordingly, the Motion to Compel Arbitration is **DENIED**. Because the agreement is unenforceable, the class allegations will remain and the matter will not be stayed. Defendant provided a proposed Order that will be modified to reflect the Court's ruling.

CAVNAR VS. REDDING POLICE DEPARTMENT
Case Number: 24CV-0204158
Tentative Ruling on Demurrer: Defendant City of Redding (erroneously sued as "Redding Police Dept." demurs to Plaintiff Christopher Allen Cavnar's Petition/Complaint pursuant to CCP § 431.10(e) and (f).

Standard on Demurrer: A general demurrer should be sustained if the complaint fails to "state facts sufficient to constitute a valid cause of action." CCP § 430.10(e). A demurrer also lies whether the complaint is "uncertain." CCP § 430.10(f). A demurrer for uncertainty will be sustained only where the complaint is so bad that defendant *cannot reasonably* respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal App.4th 612, 616). A demurrer can be used to challenge defects that appear on the face of the complaint or from matters that may be subject to judicial notice. *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318. The court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." *Hood v. Hacienda La Puente Unified School District* (1998) 65 Cal.App.4th 435, 438. No matter how unlikely, a plaintiff's allegations must be accepted as true for the purpose of ruling on a demurrer. *Del. E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. A plaintiff bears the burden of establishing a reasonable probability that a pleading can be amended to obtain leave to amend. *Blank v. Kirwan*

(1985) 39 Cal.3d 311, 318.

Merits of Motion: Plaintiff has filed a "Petition/Complaint" which provides no specific factual allegations, fails to identify any causes of action and omits a prayer for relief from the body of the document. The caption states, "14th Amendment violation, 1st Amendment violation, 4th Amendment violation, Violation of title 18 USC 801.56 (my cell phone)." No other information or factual allegations are provided. In fact, there is no body to the Petition/Complaint. The document attaches an email chain that references a trespass notice issued by the Redding Police Department. Without any specific facts, arguments or identified causes of action the Court finds the complaint fails to state sufficient facts to constitute a cause of action. CCP § 430.10(e).

Additionally, the Petition/Complaint is so devoid of facts that it would be impossible for Defendant to reasonably respond. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616. The Court finds that the Petition/Complaint is uncertain. CCP § 431.10(f).

Leave to Amend: The present motion is unopposed and therefore Plaintiff has failed to meet his burden that there is a reasonable probability that the pleading can be amended. *Blank, supra* 39 Cal.3d at 318. Leave to amend is denied.

The demurrer is **SUSTAINED** without leave to amend. A proposed order and judgment have been lodged with the Court and will be executed.

DAVIS VS. GOODLEAP, LLC
Case Number: 23CV-0203609
Tentative Ruling on Motion for Preference: Plaintiff Violet Davis brings a motion under Code of Civil Procedure section 36, subdivision (a), for preference in setting trial. The motion is unopposed by Defendant GoodLeap, LLC.

Merits of Motion: Code of Civil Procedure section 36 provides, in relevant part, as follows:

> "(a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
>
> (1) The party has a substantial interest in the action as a whole.
>
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.
>
> …
>
> (f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date…"

Here, Plaintiff has satisfied the requirements of CCP § 36. Plaintiff is over 70 years of age, has a substantial interest in the action, and has substantial health concerns that warrant preference to prevent prejudice to her interests. Defendant does not oppose the motion on the merits.

Finally, upon granting of a motion for preference, the clerk of the Court is required to set the case for trial not more than 120 days from the date the order is made. Here, the case is set well outside of that trial date. The Court will need to re-set the trial for a date no later than August 20, 2024.

Plaintiff's Motion for Preference is **GRANTED**. A proposed order was lodged with the Court and will be modified to conform to the filing ruling. The trial date of October 8, 2024, and the mandatory settlement conference set for August 5, 2024 are **VACATED.** The Court notes that, upon granting a motion for preference, the clerk of the Court is required to set the case for trial not more than 120 days from the date the order is made. The Court intends to set trial no later than August 20, 2024, in compliance with CCP § 36. **An appearance is necessary to provide the Court with acceptable trial and mandatory settlement conference dates.**

REDDING CITY BALLET VS. CHRISTENSEN, ET AL.
Case Number: 23CV-0203221
Tentative Ruling on Motion to Compel Responses and Further Responses to Discovery: Plaintiff Redding City Ballet moves to compel responses and further responses to several sets of discovery including Special Interrogatories, Requests for Production, Requests for Admissions, and Form Interrogatories. The motion is opposed by Defendant Diana Christensen.

This motion was filed on March 12, 2024 despite counsel for Defendant promising a meet and confer letter during the same week. Defendant argues that a number of the issues presented by the motion could be resolved with sufficient meet and confer efforts. It appears to the Court that this argument has merit. The Court notes that verification has not yet been provided for any of the sets of discovery at issue.

Hearing on the motion is continued to **Tuesday, May 28, 2024 at 8:30 a.m. in Department 63**. The parties are **ORDERED** to meet and confer in good faith regarding each of the pending discovery requests. Defendant is **ORDERED** to provide verified amended responses to any requests that Defendant intends to amend no later than May 10, 2024. Defendant is also directed to provide verifications as required by statute. Should there be any outstanding issues, they must be outlined in a joint statement filed with the Court no later than May 17, 2024. Should the issues resolve, a withdrawal of the motion shall be filed no later than May 17, 2024.

WELLS FARGO BANK, N.A. VS. EDMONDS
Case Number: 23CVG-00355
Tentative Ruling on Motion to Deem Requests for Admissions Admitted: The present motion is unopposed. Plaintiff Wells Fargo Bank, N.A. seeks an order deeming the truth of matters specified in Plaintiff's Request for Admissions, Set One, which was served on Defendant Janet M. Edmonds by mail on November 6, 2023.

Merits of Motion: When a party fails to respond to a request for admission, the requesting party may move for an order deeming the genuineness of documents and the truth of matters specified in the requests admitted. CCP § 2033.280(b). Failure to respond also waives any objections to the discovery propounded. CCP § 2033.280(a). Unlike a motion to compel *further* responses, a motion to compel responses when no responses have been provided does not require the propounding party to demonstrate good cause or that it satisfied a meet-and-confer requirement. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal. App. 4th 390. Here, Plaintiff's moving papers sufficiently demonstrate that the discovery was served by mail and Defendant has failed to respond within the required time frame. The request to deem the matters admitted is granted.

Monetary sanctions are mandatory per CCP 2033.280(c); however, Plaintiff did not seek monetary sanctions and provided no evidence regarding attorney's fees or other costs associated with bringing the motion. Sanctions should only be imposed for "reasonable" expenses. CCP § 2023.030. The Court does not have information upon which to make a finding that any amount of sanctions were for reasonable expenses and will not impose sanctions.

The motion is **GRANTED**. A proposed order was lodged with the Court and will be executed.

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9:00 a.m. – Review Hearings

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ASPIRE GENERAL INSURANCE COMPANY VS. ALLISON
Case Number: 22CVG-00899
This matter is on calendar for review regarding status of litigation. This action was filed on November 2, 2022. No proof of service has been filed for the Defendant. Plaintiff has been sanctioned for their failure to timely serve the Defendant. **Plaintiff is ordered to appear to provide the Court with a status of service. A failure to appear will result in the issuance of an Order to Show Cause Re: Dismissal.**

CABRERA VS. RYNEARSON, ET AL.
Case Number: 22CV-0201146
This matter is on calendar for review regarding status of minor's compromise. Plaintiff filed a declaration informing the Court that there are still liens being resolved which has prevented Plaintiff from filing a Petion for Approval. Plaintiff also informed the Court that the minor will turn eighteen years old on June 5, 2024. The matter is continued to **Monday, June 17, 2024 at 9:00 a.m. in Department 63** for status of settlement. **No appearance is necessary on today's calendar.**

CAMPBELL VS. FARLEY, D.O., ET AL.
Case Number: 23CV-0201354
This matter is on calendar for review regarding trial setting, the previous trial date having been vacated by the Court's order dated January 22, 2024. The Court designates this matter as a Plan III case and intends on setting the matter for trial no later than January 7, 2025. Defendants have posted jury fees but Plaintiff has not. Plaintiff is granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer prior to the hearing regarding proposed dates for trial. **An appearance is necessary on today's calendar.**

CHATHA, ET AL. VS. TORNADO ALLEY TURBO, INC., ET AL.
Case Number: 22CV-0200483
This matter is on calendar regarding status of responsive pleadings. The Court notes that the First Amended Complaint filed on October 10, 2022 and the Cross-Complaint filed by Benton Air Center, Inc. and James Ostrich on December 15, 2022 are at issue. However, the Cross-Complaint filed by Garrett Aviation, LLC, Garrett Azbun, Inc., and 3 JRM Development on October 10, 2022 is still not at issue. There is no responsive pleading on file for Cross-Defendants Tornado Alley Turbo, Inc. Tailwind Technologies, Inc., Kelly Aerospace, Inc., Kelly Aerospace Energy Systems, LLC, Hartzell Engine Technologies, LLC, General Aviation Modifications, Inc., Brindle Concepts, LLC, or David Schmidtman. **Counsel for Garrett Aviation, LLC is ordered to appear and provide a status for each of the remaining Cross-Defendants. Should Garrett Aviation, LLC no longer intend to move forward with any of the Cross-Defendants, a Request for Dismissal must be filed immediately. A future date for trial setting will be selected and Garrett Aviation, LLC will be required to provide notice to all parties.**

ELDRIDGE VS. RICHARDS
Case Number: 24CVG-00367
This matter is on calendar for review regarding status of requested Temporary Restraining Order. On March 28, 2024, the Court issued an Order explaining that the request was declined due to lack of notice. Plaintiff was directed to provide Defendant with notice of today's review hearing. Nothing has been filed by Plaintiff since that Order issued. **An appearance is necessary on today's calendar.**

HIBBS, ET AL VS. AGOOT, ET AL
Case Number: CVPM22-0199094
This matter is on calendar for review regarding status of the case. At the last review hearing, Plaintiffs stated that they were in the process of filing an Amended Complaint. A Doe Defendant Substitution was filed on February 22, 2024. There is no Proof of Service of Summons for newly added Defendant Fedex Ground Package System, Inc. The matter is continued to **Monday, June 24, 2024 at 9:00 a.m. in Department 63** for status of service and responsive pleading. The Court expects the matter to be at issue prior to the next hearing. **No appearance is necessary on today's calendar.**

LEDBETTER, ET AL. VS. DAVIS, ET AL.
Case Number: 22CV-0201250
This matter is on calendar for review regarding status of status of default, stipulated judgment, or dismissal. Plaintiffs filed a Status Conference Statement explaining that the parties continue to work with the County to resolve the lot line dispute. Plaintiffs request the hearing be continued sixty days. The matter is continued to **Monday, June 24, 2024 at 9:00 a.m. in Department 63** for status of the case. The Court expects that if the lot line dispute has not been resolved, that the matter will be at issue prior to the next hearing. **No appearance is necessary on today's calendar.**