VILLAFUERTE, et al v YGRENE ENERGY FUND, INC., et al

24CV47273

DEFENDANT YGRENE'S MOTIONS TO SET ASIDE DEFAULT JUDGMENT

This is a breach of contract action brought by Marco Villafuerte and Ximena Villafuerte ("Plaintiffs") against multiple defendants including Ygrene Energy Fund, Inc. ("Ygrene."

Now before the Court is Ygrene's Motion for Relief from Default Judgment and Motion to Set Aside the order striking Ygrene's Answer.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the motion is **DENIED, Without** prejudice to refile.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

KILMADE v KAISER ENTERPRISES, INC.

24CV47369

REVIEW OF PROPOSED CLASS ACTION DISTRIBUTION

Based on the Declaration of Nick Castro filed on June 25, 2026, the Court finds all settlement funds have been properly disbursed. In light of the deadline for cashing of settlement checks, **this matter is scheduled for an OSC re Dismissal on January 27, 2027, at 1:30 p.m. in Dept. 4**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

WALKER, et al v TAYLOR AND CLARK, TRUSTEES OF DOUBLE SPRINGS RANCH TRUST, et al

24CV47475

DEFENDANTS/CROSS-COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

This civil action stems from dispute concerning an easement and questions over title to a certain stretch of property. Randy Walker ("Walker") and Jessica Albonico ("Albonico") (collectively, "Plaintiffs") filed this action to determine the parties' respective rights and duties as well as to quiet title.

Defendants are neighboring landowners: Jody A. Taylor ("Taylor") and Sharon L. Clark ("Clark") Trustees of the Double Springs Ranch Trust; Carol A. Gates, Trustee of the Carol A. Gates Family Trust ("Gates"); Perry Williard ("Perry"); Cheryl Willard; ("Cheryl") Alden R. Houbein and Virginia A Houbein, Trustees of the Houbein Revocable Trust DTD March 21, 1996 ("Houbeins"); John M. Taylor, Katherine L. Taylor, and Mark Van Lobel Sels and Mary Van Lobel Sels (collectively "Van Loben Sels").

On April 29, 2025, Taylor and Clark as Trustees, Gate as Trustee, and the Van Lobel Sels filed a Cross-Complaint against Plaintiffs for declaratory relief, quiet title, trespass, permanent injunction, and abuse of process. For ease of reference, the Court refers to the cross-claiming defendants collectively as "Cross-Complainants."

On July 11, 2025, the Court entered a preliminary injunction against Plaintiffs prohibiting them from entering, traversing, or performing any acts of use upon the Cross-Complaints' property and any real property described in the Complaint to prevent the creation of a prescriptive easement under civil code 1007 pending a full hearing.

Now before the Court is a motion for summary judgment/adjudication brought by Cross-Complainants. The motion is opposed.

I. Background

The background facts are taken from the Cross-Complainant's Separate Statement ("UMF") and Plaintiff's Separate Statement of Additional Facts ("PUMF") and the documents referenced therein.

In 1929, Mary Linn Walker and Charles H. Walker ("Walkers") executed a satisfaction of judgment to sell 60 acres to the City of Stockton which did not include an access

easement to their remaining 20 acres. (UMF 4.) The 20-acre property is referred to herein as the “20 Acres.” Between 1929 and 2018 the City of Stockton owned the land surrounding the 20 Acres. (UMF 1.) The Van Loben Sels purchased that surrounding land from the City of Stockton on April 24, 2018. (*Ibid*.)

Plaintiff Walker became owner of a ½ undivided interest in the 20 Acres on September 11, 2013 (PUMF 10.) The Van Loben Sels Property surrounds the 20 Acres and separates it from California State Highway 12. (UMF 31; PUMF 2.) Plaintiffs provide photographic evidence showing that the 20 Acres are surrounded on one side by water and by the Cross-Complainant properties on the remaining sides. (Plaintiff’s Ex. 6.)

Plaintiffs contend that when their grandparents (the Walkers) owned the 20 Acres, they often accessed their property via a gate access at Highway 12 (“Highway 12 Gate.”) (PUMF 3, 5.) According to Plaintiffs, the purported easement at issue is as follows:

> The easement road begins from Highway 12 (approximate address according to
>
> GPS Map- 3310-3384 Highway 12), Valley Springs, California, 95252; coordinates 38.20942 degrees N, 120.77016 degrees W.
>
> The first gate is near the highway. Easement road initially crosses parcels 046-017-048, 046-017-116 and 046-020-005 (Houbein/Willard). It then crosses the Jody Taylor/Caro! Gates property with a second gate located on the Taylor/Cates property and approximately .3 miles from the Highway 12 gate. It then goes approximately .9 miles to a third gate at or near the boundary line between the Taylor/Gates property and the Van Loben Sels property. It then crosses the Van Loben Sells property for approximately .8 miles to Plaintiffs' property. (Plaintiff’s Ex. 14.)

After Walker became the owner of the 20 Acres, he asked Rob Bird for the gate code for the Highway 12 Gate. (UMF 2.) Rob Bird is the son of Defendant Clark. (PUMF 12.) The parties dispute the reason why Walker felt the need to ask Bird for the code. (UMF 2.) Cross-Complaints assert that Walker asked because he knew he needed permission to use the Highway 12 gate to access the 20 Acres. Plaintiffs assert Walker asked because he believed it was his right to use the Highway 12 Gate and simply did not have the code. Plaintiff Albonico did not receive the gate code though she used the gate when with Walker. (UMF 3.)

In April of 2021, there was a gate incident (“2021 Gate Incident”), though what took place at that time is unclear (UMF 7.) Apparently, Plaintiff Walker’s friend damaged the Highway 12 gate. (Declaration of Rob Bird (“Bird Decl.”) ¶ 10.) After the 2021 Gate Incident, Defendants contend that Plaintiff Walker understood he could no longer use the Highway 12 gate. (UMF 7.) Plaintiffs contend that they continued to believe they had the right to access the property. (UMF 7.)

II. Legal Standard

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

As the moving parties, Defendants have the initial burden to show Plaintiff's claims have no merit by showing either (1) that one or more elements of each cause of action cannot be established or (2) there is a complete defense to the claims. (Code Civ. Proc., § 437c(p)(2); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850.) If Defendants meet that burden, then the burden shifts to Plaintiff to show that a triable issue of material fact exists as to the element or defense at issue. (*Ibid.*) In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the opposing party. (*Aguilar, supra,* 25 Cal.4th at p. 843.)

III. Discussion

A. Quiet Title: Easement by Prescription

"The elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years." (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570.) Whether the elements of prescription are established is a question of fact for the trial court. (*Ibid*.)

Cross-Complainants first argue that the use was permissive or merely neighborly accommodation and therefore cannot be used to gain prescriptive rights. In support of their contention, Cross-Complainants assert that Plaintiff Walker had to ask for the Highway 12 Gate code and did not complain when he was told he could not use his own lock. (UMF 2, 12.) They further assert that Albonico never had the gate code. (UMF 3.) Cross-Complaints argue that these facts show that the use of the Highway 12 gate was always permissive.

"Whether the use is hostile or is merely a matter of neighborly accommodation, however, is a question of fact to be determined in light of the surrounding circumstances and the relationship between the parties." (*Warsaw*, supra 35 Cal.3d at 572.)

Walker presents facts from which a reasonable trier of fact could conclude that use of the gate was based on his and his family's historic use and a reasonable belief that he had the right as owner of the 20 Acres to use the gate. Specifically, Plaintiffs point out that historically – from 1986 to 2006 – when accessing the 20 Acres with their grandfather (who was then owner) – they used the Highway 12 gate. (PUMF 5, 6.) When Plaintiff Walker took ownership in 2013, he presented evidence of his ownership as the grandson of the prior owner – who had used the Highway 12 gate for years – to

gain access to the gate code. (PUMF 15.) After giving evidence of the chain of ownership, Plaintiff Walker was provided with the gate code. (Response to PUMF 15.)

While this initial use of the Highway 12 gate may arguably have been permissive, Plaintiffs produce evidence raising a triable issue of material fact regarding the subsequent use of the Highway 12 gate. In response to interrogatories, Clark stated:

> Randy Walker, on one occasion in 2017. asked for permission and was given the gate code. Rob Byrd told Randy Walker in 2017 that if he wanted written permission to allow access more than one time, he would have to see Sharon Clark or Carol Gates, but he never did. (Plaintiff's Ex. 19.)

Thus, by at least one Cross-Complainant's own admission, Plaintiffs used the Highway 12 gate without permission, if giving the code in 2017 was in fact meant to be a "one time" event.

Plaintiffs also produce evidence that they leased the 20 Acres for cattle grazing and that the cattle were transported through the Highway 12 gate without issue. (PUMF 26.)[1] Plaintiffs also produce evidence that, with Cross-Complainant's knowledge, they replaced a gate between the Gates and Van Loben Sels' properties from a barbed wire gate to a metal swing gate. (Plaintiff's Ex. 19.) Thus, there is substantial evidence from which could be concluded that Plaintiffs repeatedly used the Highway 12 gate beyond the permission granted in 2017.

However, in April 2021, Rob Bird explicitly withdrew the permission to use the Highway 12 gate. When this occurred, there is no evidence that Plaintiffs protested or made any claim of right to use the Highway 12 gate. (UMF 7.) While this evidence may tend to support Cross-Complainant's contention that the use of the gate was always by permission, it does not negate the evidence that Plaintiffs used the Highway 12 gate repeatedly after the 2017 "one time" permission.

Plaintiffs have sufficiently raised triable issues of material fact with regards to whether their use was hostile.

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[1] Confusingly, the cattle lease seems to have been arranged by the co-owner of the 20 Acres, Mike Walker. (Response to PUMF 26.) Mike Walker apparently also had the gate code for use to access the 20 Acres because he provided the cattle truck access through that access point. (*ibid*.)

Cross-Complainant's also take issue with the "continuous use" requirement. They assert that because the Van Loben Sels took ownership of the property in 2018 and Plaintiffs ceased use in 2021, they cannot show continuous use for a period of five years.

Plaintiff Walker asserts that he took ownership in 2013 and asked for the gate code at that time. (Response to UMF 10.) Gates asserts that permission to use the gate was granted in 2017. (Plaintiffs' Ex. 19.) Either way, by 2017 (if not sooner) Plaintiffs were using the Highway 12 gate and access road to reach the 20 Acres. Based on the somewhat limited explanation of the access road provided by Cross-Complainants, this would mean that Plaintiffs were crossing the Van Loben Sels property prior to their taking ownership.[2] Thus, the argument that there is no evidence of continued use for five years is simply not supported.

Plaintiffs have raised triable issues of material fact in support of their claim for easement by prescription. Accordingly, **summary adjudication on the claim for easement by prescription is DENIED**.

B. Quiet Title: Easement by Estoppel

"The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) "An estoppel may occur where the owner of the dominant parcel relies on the conduct or representations of the servient owner such that equity establishes an easement in order to prevent an injustice." (See Christian v. Flora (2008) 164 Cal.App.4th 539, 549.)

Cross-Complainants first assert that there must be an official relationship between the parties before estoppel can apply. However, they cite no case law or statute in support of this broad contention.

They next assert that none of the Cross-Complainants acted in any way or said anything that their permission to use the Highway 12 Gate conferred any sort of property right. They assert that the only action taken by any of them was to give the gate code to Plaintiff Walker as a neighborly accommodation.

[2] This would also tend to explain why Van Loben Sels would have emailed Plaintiff Walker in 2018 to discuss access and improvements to their various properties – because Plaintiff Walker would have already been using that land. (Plaintiff's Ex. 12.)

In opposition, Plaintiffs point out that the Cross-Complainants engaged in behavior that either led him to believe he had more ownership rights or confirmed his prior beliefs. For instance, Plaintiffs produced evidence that when the gate code was requested, there were no restrictions placed on the use or access. (Reply Ex. 3) That he built a gate between the Cross-Complainant's properties without permission. (RFA 4, Ex. 18)

In her interrogatory responses, Gates stated that the gate access was give on one occasion in 2017, and that Plaintiff Walker was advised that if he wanted to continue using the access, he would need permission from either Clark or Gates – however, Walker never sought such permission. (Pl Ex 19) Moreover, no one stopped Plaintiffs from using the Highway 12 gate for another five years, despite not seeking that alleged extra permission. (*Ibid;* see response to Interrogatory 17.1, "[Walker] was not permitted to use code more than once and never told Responding Party he used code more than once."] There is no evidence that any Cross-Complainant rebuked Plaintiffs for using the gate code more than the single time in 2017. Thus, from these facts, a reasonable conclusion would be that the Cross-Complainants engaged in conduct from which Plaintiffs could believe they had a right to use the Highway 12 gate with or without permission. In reliance on this, Plaintiffs made improvements to the gate to improve access but were then denied access.

Accordingly, as Plaintiffs raise issues of material fact, **the motion for summary judgment on their easement by estoppel claim is DENIED**.

C. Quiet Title: Equitable Easement

> "For well over 75 years, the California courts have had the discretionary authority to deny a landowner's request to eject a trespasser and instead force the landowner to accept damages as compensation for the judicial creation of an easement over the trespassed-upon property in the trespasser's favor, provided that the trespasser shows that (1) her trespass was "'innocent'" rather than "'willful or negligent,'" (2) the public or the property owner will not be ""'irreparabl[y] injur[ed]"" by the easement, and (3) the hardship to the trespasser from having to cease the trespass is ""greatly disproportionate to the hardship caused [the owner] by the continuance of the encroachment."""
>
> (*Shoen v. Zacarias* (2015) 237 Cal.App.4th 16, 19 [citations omitted].)

All three elements must be present before a court may grant an equitable easement. (*Ibid.*)

Cross-Complainants argue that Plaintiffs cannot meet any of the required elements. First, they assert that there was no trespass at all. They assert that Plaintiff Walker was given permission in 2017 to use the Highway 12 gate and then stopped using it when permission was withdrawn in 2021. Thus, there was never a "trespass."

Plaintiffs, however, have produced evidence giving raising a question of fact about whether they did in fact engage in an innocent trespass. They present evidence that the gate code was allegedly provided for a one-time use in 2017, but everyone acknowledges that Plaintiffs used the Highway 12 gate more than that one time. (Plaintiffs' Ex. 19.) Thus, a reasonable fact trier could conclude that Plaintiffs trespassed when they continued to use the code for the Highway 12 gate.

Cross-Complainants next assert that the other elements cannot be established because the Plaintiffs' ancestors made the proverbial bed in which Plaintiffs now lie. That is, Cross-Complainants argue that when the Walkers sold a portion of their property to the City of Stockton for $4,175.00, they could have preserved their access to the Walker Property. However, they did not, and thus, Cross-Complainants argue, Plaintiffs cannot burden the Cross-Complainants based on their grandparents' bad decision. Notably, Cross-Complainants again cite no authority for a blanket proposition.

Plaintiffs have presented evidence that they continuously used the Highway 12 gate to access the Walker Property. During that time, there is no evidence that any of the Cross-Complainants were irreparably injured by Plaintiffs' use nor do they make any such argument. In fact, there is evidence that they may have benefited by Plaintiffs continued use by virtue of his acts of maintenance (such as installing new, updated gates). Finally, there is evidence that the Highway 12 gate provides the only land access to the Walker Property. (Plaintiff's Ex. 6; UMF 31.) A reasonable trier could conclude that the lack of any access to the Walker Property via land is a hardship disproportionately greater than any injustice caused by continued use.

Accordingly, the **motion for summary judgment on the cause of action for equitable easement is DENIED**.

D. Declaratory Judgment

Because the Court has concluded that there are triable issues of material fact present, the Cross-Complaints **motion for summary adjudication on the claim for declaratory judgment** is not persuasive and is accordingly, **DENIED**.

E. Trespass

A person who interferes with or obstructs an easement's use deprives the easement

owner of a predictable property interest. The interference can be a trespass for which the easement owner may recover damages. (*Herzog v. Grosso* (1953) 41 Cal.2d. 219, 225.)

Plaintiffs allege an easement by various means and that their use of the easement has been obstructed. Because triable issues of material fact remain with regards to the easement, **summary judgment on the claim of trespass is premature and is accordingly, DENIED**.

IV. Conclusion

Cross-Complainants’ motion for summary judgment/adjudication is denied.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

UNIVERSITY CREDIT UNION v YVONNE BERRY, individually and as Trustee

25CF15100

PLAINTIFF'S MOTION TO STRIKE CROSS-COMPLAINT/ PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

This case involves the alleged breach of a solar loan entered into between University Credit Union ("Plaintiff") and Yvonne L. Berry, individually and as a Trustee of the Yvonne L. Berry Trust ("Defendants.") Now before the Court is a motion to strike Defendants' Cross-Complaint and Plaintiff's motion for summary judgment.

The motions were previously before the Court. On May 8, 2026, the Court noted that the Defendants' Answer raised significant questions of material fact which could preclude summary judgment and gave Defendants until June 12, 2026, to file an opposition. No opposition has been filed, and accordingly, the Court adopts its tentative ruling as set forth below.

I. Background

On August 17, 2021, Defendants entered into a written loan agreement with Plaintiff for the sum of $35,861.54 at 2.733 % per annum interest. (UMF 1.) Plaintiff performed under the contract. (UMF 2.) The last payment Defendants made was on December 3, 2024. (UMF 5.) There remains a balance of $34,469.90 on the loan. (UMF 4.)

Defendant has denied the allegations and has asserted the defense that the signature on the Agreement is not hers and was fraudulently obtained. (Answer ¶ 9.)

II. Legal Standard

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

A plaintiff may move for summary judgment when the plaintiff contends there is no defense to the cause of action. (Code Civ. Proc., § 437c, subd. (a).) A plaintiff meets the burden of showing there is no defense by proving each element of the cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) A plaintiff moving for summary judgment is not required to disprove any defense asserted by the defendant in addition to proving each element of the plaintiff's own cause of action. (*Aguilar v. Atlantic Richfield Co*. (2001) 25

Cal.4th 826, 853.) If the plaintiff meets its burden, then the burden shifts to the defendant to show the existence of a triable issue of material fact. (*Ibid*.) The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Id.* at 850.)

III. Discussion

Plaintiff seeks summary judgment on its breach of contract claim. The elements of a cause of action for breach of contract are: (1) existence of a contract; (2) plaintiff's performance of its obligations under the contract or excuse for nonperformance; (3) defendant's breach of the contract; and (4) resulting damages proximately caused by defendant's breach. *(Reichert v. Gen. Ins. Co.* (1968) 68 Cal.2d 822, 830.)

Plaintiff has demonstrated sufficient evidence in support of its cause of action, and the burden is now upon Defendants to show the existence of a triable issue of material fact. Defendants have not filed any opposition to the motion for summary judgment despite the Court providing an extension of time for one, and have therefore failed to show the existence of a triable issue of material fact.

Accordingly, Plaintiff's **motion for summary judgment is GRANTED**; based on this ruling the Motion to strike cross-complaint is moot.

The Mandatory Settlement Conference scheduled for August 17, 2026, at 8:30 a.m. in Dept. 2 is VACATED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order and Judgment complying with Rule 3.1312 in conformity with this Ruling.

FRAGOZA v TREVINO

25CV48144

PLAINTIFF/CROSS-DEFENDANT'S AMENDED DEMURRER TO SECOND AMENDED CROSS-COMPLAINT

This matter involves a real property dispute between Cruz Fragoza ("Fragoza") and Stevino Real Estate Investment, LLC ("LLC"), Steven C. Trevino ("Trevino"), Angela M. Barry ("Barry") and William Carter ("Carter") (collectively "Cross-Complainants.")

Now before the Court is a demurrer filed by Fragoza as to the fifth cause of action in the Second Amended Cross-Complaint ("SACC") for intentional infliction of emotional distress.

The Court grants Fragoza's request for judicial notice ("RJN"). Cross-Complainants have not filed any opposition to either the RJN or Motion.

I. Facts

These facts are compiled from the SACC.

Plaintiff and Cross-Defendant Cruz Fragoza ("Fragoza") filed this action on or about July 3, 2025, concerning adjacent parcels commonly known as 2912 and 2920 Heinemann Drive, Valley Springs, California. (SACC ¶ 1.) LLC is the owner of 2920 Heinemann Drive ("APN 2") and Trevino is the manager of APN2 and the residence thereon. (*Id.* ¶ ¶ 2, 3.) Barry and Carter have been tenants since 2010 and 2017 respectively. (*Id.* ¶ ¶ 4, 5.)

Next to APN 2 is an unimproved lot with a septic system ("APN 1"), which serves the residence on APN 2. (SACC ¶ 6.) Since 2008, Cross-Complainants have "openly and continuously" used the septic system on APN 1 as reasonably necessary to the care and maintenance of the system serving APN 2. (*Id.* ¶ 7.) They allege that Fragoza knew or should have known of this use and maintenance of APN 1 to serve APN 2 and has nevertheless claimed rights adverse to their own. (*Id.* ¶ ¶ 12, 13.)

On July 28, 2011, Fragoza notified LLC that he was the owner of APN 1 and that he had intentions to sell APN 1. (SACC ¶ 16.) Later in 2017, Fragoza again wrote to LLC

referring to the Tenants on APN2 and threatening to install a cross-fence. (*Ibid*.) In 2024, Fragoza's attorney apparently contacted the LLC stating that Fragoza owned APN1 and that Cross-Complainants only owned a septic easement. (*Id.* ¶ 17.)

In or around the spring of 2025, Fragoza appeared over various times at the residence on APN 2, including the curtilage of APN 2's home, and attempting to interfere with APN 2. (SACC ¶ 18.) During those visits from Fragoza, Barry and Carter were present, and witnessed Fragoza use a chainsaw and other loud tools to cut fencing, install posts, and erect new fencing that interfered with access to the septic system serving APN 2. (*Id.* ¶ 19.) Fragoza allegedly continued to return and threaten APN 2 despite being told to stop. (*Id.* ¶ 20.)

Cross-Complainants seek continued use of the septic system on APN 1 and damages.

II. Legal Standard

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I.Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co.,* 148 Cal. App. 4th 100, 111.) In considering the demurrer, the court must accept the allegations set forth in the complaint as true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

III. Discussion

To assert a cause of action for intentional infliction of emotional distress, the SACC must allege: 1) extreme and outrageous conduct by the cross-defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) cross-complainants' suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the cross-defendant's outrageous conduct. (*Ess v. Eskaton Properties* (2002) 97 Cal.App.4th 120, 129-130.)

"Generally, conduct will be found to be actionable where the 'recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" (*KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028 [citing Rest.2d Torts, § 46, com. d].) The conduct must not only

be outrageous, but also “directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.” (*Christensen v. Superior Court* (1991) 54 Cal.3d 868. 903.)

Here, the SACC alleges that Fragoza entered APN 2, where Barry and Carter were living, “used a chainsaw and other loud tools to cut, damage, and remove perimeter fencing serving APN 2, install new posts and wire fencing in or adjacent to the curtilage and septic-access area serving APN 2, and place items in a manner that interfered with access to the septic system serving APN 2.” (SACC ¶ 46.) They allege that this behavior, under the circumstances of an active dispute between the party, was outrageous behavior. (*Id.* ¶ 47.)

The only parties who could arguably raise this cause of action would be Barry and Carter, who were the only Cross-Complainants on the property at the time of the alleged fence cutting. However, the fact that the tenants were at home and disturbed by Fragoza’s actions simply does not give rise to the level of outrageous conduct required for this tort. Indeed, liability “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092. 1122 [citing Rest.2d Torts, § 46, com. d.])

Further, the Court notes that Cross-Complainants have not filed an opposition and the Court may consider this failure as consent to the granting of the motion. (Cal. Rule. Court 8.54(c).)

IV. Conclusion

The **demurrer is SUSTAINED, WITHOUT leave to amend**, for the fifth cause of action for intentional infliction of emotional distress.

The clerk shall provide notice of this ruling to the parties forthwith. Cross-Defendants to submit a formal Order and Judgment complying with Rule 3.1312 in conformity with this Ruling.

TYRE v TYRE

25CV48174

DEFENDANT'S MOTION TO VACATE ORDER DIRECTING PARTITION BY SALE

This matter involves a complaint for partition of personal property (mobile home) brought by Ethan Tyre ("Plaintiff") against Brianna Tyre ("Defendant." Now before the Court is Defendant's Motion to Vacate the order of partition.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the motion is DENIED WITHOUT prejudice to refile.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

HIGHLAND ORGANICS, LLC v TRUSTY TRANSPORTATION AND DISTRIBUTION, LLC, et al

24CV47302

DEFENDANT COX' MOTION TO STRIKE IMPROPERLY NAMED DEFENDANTS

This is a breach of contract action brought by Highland Organics, LLC ("Plaintiff") against various Defendants including Melinda Cox ("Cox") and Evan Tiley ("Tiley.")

Now before the Court is Cox's Motion to Strike Improperly Named Defendants. Tiley has filed a joinder of motion.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the**

> **court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the **motion is DENIED WITHOUT prejudice to refile**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.