



Superior Court of California County of San Benito

Tentative Decisions for January 13, 2025

Courtroom #1: Judge J. Omar Rodriguez

10:30 a.m.

CU-22-00060 Rider et al. v. BMCH, California LLC, et al.

Based on the parties' case management conference statements, the case management conference is continued to April 14, 2025 at 10:30 a.m.

CU-22-00099 Fellows et al. v. BMC WP, LLC, et al.

Based on the parties' case management conference statements, the case management conference is continued to March 3, 2025 at 10:30 a.m.

CU-24-00162 Action Eyewear Corp et al vs. ICU Eyewear, Inc.

Defendant's Counsel's motion is GRANTED as requested. Defendant's counsel has complied with the requirements of both the Code of Civil Procedure and the Rules of Court in presenting this motion. It appears that the attorney client communication is necessary for proper representation is not possible under the circumstances described. The motion will not prejudice either party.

The Case Management Conference is continued to March 17, 2025 at 10:30 a.m.

The demurrer to Defendant's Answer and to the Cross Complaint are sustained without leave to amend as it does not appear that any amount of pleading would be sufficient to cure the defects mentioned herein. The court takes judicial notice of items in its own file as requested, and of the statutes referenced in Plaintiff's request for judicial notice. The case management conference is vacated.

A demurrer serves to test the legal sufficiency of the complaint. It tests whether, as a matter of law, the facts the plaintiff has alleged in the complaint state a cause of action under any legal theory. (*New Livable Cal. v. Assoc. of Bay Area Gov'ts* (2020) 59 Cal. App. 5th 709, 714-715.) It does not test whether a party can prove the allegations pled. (*Tindell v. Murphy* (2018) 22 Cal. App. 5th 1239, 1247.) A judge may not resolve questions of fact on demurrer unless there is only one legitimate inference to be drawn from the allegations of the complaint. (*TracFone Wireless, Inc. v. County of Los Angeles* (2008) 163 Cal. App. 4th 13359, 1368.) In determining whether a complaint states facts sufficient to state a cause of action, the court may consider all material facts pleaded in the complaint and matters of which the court may take judicial notice, but not contentions, deductions, or conclusions of fact or law. (Cal. Civ. Proc. §430.30 sub (a); *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal. App. 4th 651, 658.) These provisions apply as well when one demurs to the answer to a complaint, which must state facts sufficient to constitute a defense, and must be sufficiently certain so that the other party may be able to understand the defense presented or the answer made. (Cal. Civ. Proc. §460.30.)

A defendant must adhere to the requirements of the Code of Civil Procedure with regard to the filing of amended pleadings, and the timing of filing both an answer and a cross complaint. Code of Civil Procedure section 428.40 requires that a cross complaint and an answer be separate pleadings. Second, after a responsive pleading has been filed a party may not amend their pleadings without leave of court. (Cal. Civ. Proc §426.50.) Compliance with the rules of court and the code of civil procedure by a self-represented party is necessary, and the failure to do so ultimately may prejudice the other party's right to a timely resolution of their case. (*McComber v. Wells* (1999) 72 Cal. App. 4th 512, 522.)

Here, Defendant's Answer is procedurally defective in that the Defendant filed an amended answer without leave of court after a responsive pleading had been filed, moreover that the Defendant filed her Cross Complaint and Answer as a single omnibus document rather than as two separate documents as is required by the California Rules of Court. Moreover, Defendant's answer includes facts that contradict facts that were deemed admitted. Plaintiff argues, and the court concurs, that once facts are deemed admitted they are binding and attempts to contest them should not be entertained by the court. (*Murillo v. Sup. Ct.* (2006) 143 Cal. App. 4th 730.736.) The facts deemed admitted herein should not and cannot be relitigated, and they preempt the Defendant from presenting meaningful defenses or counter claims. As such, the Amended Answer fails to state facts sufficient to constitute a valid Defense, and a demurrer pursuant to Code of Civil Procedure section 430.20(a) is sustained without leave to amend. The facts deemed admitted would therefore preclude Defendant from contesting issues related to the attorney's fee lien, the fee agreement, or the services rendered. Additionally, the allegations presented delve into matters that the mediation privilege laws would preclude from admission as they would be deemed confidential or arising from a mediation proceeding. (Cal. Civ. Proc §§1119, et seq.)

The amended-cross complaint suffers from the same defects as the amended answer. As a result, the demurrer to the cross-complaint is sustained without leave to amend. Additionally, Cross-Complainant/Defendant makes numerous claims which are not legally cognizable, pursuant to CCP 430.10(e), the demurrer must be sustained as to these causes of action because they do not state facts sufficient to state a cause of action. For example, the Seventh Cause of Action for Coercion fails to state any facts sufficient to bring it within California Civ. Code §52.1 (Bane Act) which allows individuals to sue for damages if their state or federal civil rights are violated through violence, threats, intimidation or coercion. The Ninth Cause of Action fares no better for the same reason- no facts are alleged which suggest the Plaintiff retaliated against the Defendant by any means. Moreover, in the context of an attorney-client relationship, retaliation is not a viable claim, which at a minimum would require the Defendant show she engaged in a protected activity. As such, it too fails to state facts sufficient to state any cause of action rendering susceptible to attack by demur. The causes of action sounding in fraud are not pled with any degree of particularity, as is required

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for any claim sounding in fraud. (See Fifth, Sixth, and Eleventh Causes of Action.) The Twelfth cause of action for violations of the Business and Professions code is wholly unsupported by factual allegations nor does it identify any unlawful, unfair, or fraudulent business practices by the Plaintiffs. Mere dissatisfaction with legal services does not fall within the scope of the referenced statute, as the Defendant would need to allege specific conduct in violation of another law that significantly harms consumers, competition, or the public at large. The Thirteenth causes of action for failure to take steps to prevent discrimination or harassment is likewise unsupported by factual allegations and is again inapplicable to the attorney-client relationship, given that this cause of action arises in employment law which is inapplicable in this context. The Fourteenth and Fifteenth causes of action are pled without stating any specific third-party contracts or identifying any extant economic relationships or facts showing Plaintiff engaged in wrongful conduct to disrupt these relationships. The Sixteenth Cause of action for harassment similarly is without either legal or factual support, given that the legal framework given is once again a matter of employment and certain professional relationships, exclusive of the attorney-client relationship.

This Court will also address Plaintiff's Motions to Compel the Production of Documents and Motion to Compel Responses to Interrogatories, which are unopposed and GRANTED by this Court. Plaintiff successfully moved for an order compelling Defendant to comply with the Requests for Production of Documents and Interrogatories and imposed monetary sanctions. Defendant has failed to comply with this Court's order, which resulted from a previous motion to compel brought by Plaintiff. As Plaintiff points out, Plaintiff has filed multiple successful motions to compel, which has failed to change Defendant's general response towards discovery requests. Defendant continues to refuse to comply with the discovery requests and/or court orders. As a result, dismissal of Defendant's Cross-Claims is warranted and appropriate under California Code of Civil Procedure section 2023.030(d) as requested. Monetary Sanctions in the amount of \$10,000.00 are awarded against Defendant and in favor of Plaintiff, which is due within 60 days after service of this order. In light of the dismissal order, this Court will not set a deadline for Defendant to serve responses.

The Court GRANTS Plaintiff's unopposed Motion for Sanctions pursuant to Code of Civil Procedure sections 128.5 and 128.7. Plaintiff has demonstrated that Defendant has engaged in frivolous tactics that were brought in bad faith and/or brought motions or filed papers for an improper purpose. Defendant Hoffman repeatedly refuses to engage in the discovery process and has brought several motions that were designed to harass Plaintiff. Defendant has also admitted that she was not acting in good faith and refused to meet and confer in good faith. The Court orders Defendant to pay Plaintiff \$7,272.53 in attorneys fees and costs for bringing this motion. Payment is due within 60 days after service of this order.

CU-24-00138 Castro, Patricia et al vs. Bedolla, Katherine Theresa Vais et al

Defendant's Demurrer to Plaintiffs' Second Amended Complaint ("SAC") is SUSTAINED with leave to amend. The Court grants Defendants' request for judicial notice.

The Case Management Conference is continued to March 24, 2025 at 10:30 a.m.

City and Bedolla demur to the SAC's first cause of action for negligence on the grounds that the second amended complaint fails to allege facts establishing a duty of care upon which to predicate Bedolla and City's alleged liability for negligence.

Bedolla demurs to the SAC's second cause of action for negligent interference with prospective economic relations on the grounds that the second amended complaint fails to allege the existence of a business relationship between Plaintiffs and their commercial landlord Jospeh Sanchez containing the probability of future economic benefit to Plaintiffs in the form of fire insurance proceeds.

A demurrer serves to challenge a complaint or cause of action that fails to state sufficient facts to constitute a cause of action. (Cal. Civ. Proc. §430.10 sub. (e).) The demurrer serves to test as a matter of law, whether the facts as alleged in the complaint state a cause of action under any legal theory. (*New Livable Cal. v. Assoc. of Bay Area Gov'ts* (2020) 59 Cal. App. 5th 709, 714-715.) The test is the legal sufficiency of the allegations and does not test the truth or accuracy of the facts alleged in the complaint. Instead, the court must assume the truth of all properly pleaded factual allegations. With limited exceptions, the plaintiff is only required to plead ultimate facts and need not plead evidentiary facts supporting the allegations of ultimate facts. The court must interpret the complaint

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reasonably, reading it as a whole, and considering all parts in their context. (*Courtesy Ambulance Serv. v. Sup. Ct.* (1992) 8 Cal. App. 4th 1504, 1519.) The court need not assume the truth of pleaded deductions, contentions, or conclusions of law or fact. (*Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal. App. 4th 1068, 1078.) When a defendant negates any essential element of a particular cause of action, the court should sustain the demurrer as to that cause of action. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 880.)

The First Cause of Action within the SAC seeks damages against Bedolla and City under a general negligence cause of action claiming that Defendants conduct a sham investigation, which omitted significant information such as witnesses and ignoring equipment involved in the fire. (SAC ¶¶38, 39.) Negligence has three elements: (i) a legal duty to use due care; (ii) a breach of that duty; and (iii) damages that are proximately caused by the breach. (*Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1202.) When determining whether a party has a legal duty, a distinction is drawn between claims of liability based on misfeasance and those based on non-feasance. (*Ibid.*) Misfeasance exists when the defendant is responsible for making the plaintiff's situation worse, i.e., the defendant has created a risk. Conversely, nonfeasance is found where the defendant has failed to aid the plaintiff through beneficial intervention. Liability for nonfeasance is limited to situations where there is a special relationship that creates a duty to act. (*Ibid.*)

“The breach of duty may be an affirmative act which places the person in peril or increases the risk of harm as in *McCorkle v. Los Angeles* (1969) 70 Cal.2d 252, where an officer investigating an accident directed the plaintiff to follow him into the middle of the intersection where the plaintiff was hit by another car.” (*Williams v. State of California* (1983) 34 Cal.3d 18, 24.) However, the facts alleged in the SAC are more similar to the facts of *Williams v. State of California* (1983) 34 Cal.3d 18. There, the “substance of plaintiff's complaint is that unnamed agents of the state "arrived within minutes of the accident and assumed the responsibility of investigating the accident.” (*Williams v. State of California* (1983) 34 Cal.3d 18, 27.) “The officers did not create the peril in which plaintiff found herself; they took no affirmative action which contributed to, increased, or changed the risk which would have otherwise existed; there is no indication that they voluntarily assumed any responsibility to protect plaintiff's prospects for recovery by civil litigation; and there are no

allegations of the requisite factors to a finding of special relationship, namely detrimental reliance by the plaintiff on the officers' conduct, statements made by them which induced a false sense of security and thereby worsened her position.” (*Id.* at 27-28.) As a result, the Court in *Williams* concluded that “plaintiff has not stated a cause of action in that she fails to establish a duty of care owed by defendant state.” (*Id.* at 27.)

Here, Plaintiffs’ cause of action for negligence is founded on nonfeasance, specifically, the allegation that Bedolla failed to perform a more robust fire investigation, including the identification of witnesses, which, had such investigation ostensibly been performed, would have identified the landlord’s handyman as the cause of the fire and aided Plaintiffs in their efforts to recover insurance benefits for their fire loss. Thus, the critical question is whether the SAC alleges facts that would support a legal duty of care under the special relationship doctrine. Here, as in *Williams* there are no facts alleged in the SAC that indicate that there is a special relationship. For example, there are no allegations that Plaintiffs detrimentally relied on Defendant(s) conduct there are no statement made by Defendant(s) which induced a false sense of security thereby worsening Plaintiffs’ position.

The elements of negligent interference with prospective economic relations are: (1) the existence of an economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) the defendant’s knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant’s intentional or negligent failure to act with reasonable care; (5) actual disruption of the relationship; (6) and economic harm proximately caused by the defendant’s negligence.” (*Redfearn v. Trader Joe’s Co.* (2018) 20 Cal.App.5th 989, 1005). The tort alleged imposes a liability on Defendants for improper methods of disrupting or diverting the business relationship of another falling outside the boundaries of fair competition. (*Settimo Assoc. v. Environ Syst. Inc.* (1993) 14 Cal. App. 4th 842, 845.) The fundamental problem with Plaintiffs’ second cause of action as alleged, is that Plaintiffs cannot reasonably be construed to be “in the business” of submitting fire insurance claims and/or collecting fire insurance benefits. In fact, Plaintiffs specifically allege that their relationship with Josphe Sanchez is one of landlord/tenant, and, that Plaintiffs each operate small commercial businesses within the building owned by Joseph

Sanchez. Although the commercial leases between Plaintiffs and landlord Joseph Sanchez may have contained provisions relating to the respective obligations of the parties in the event of a fire loss at Plaintiffs' leased premises, the existence of such contingency provisions would not somehow increase the risk of a fire at Plaintiffs' leased premises or create any "probability" of future economic benefit to Plaintiffs in the form of fire insurance proceeds.

Accordingly, Plaintiffs fail to allege the existence of a business relationship between themselves and their commercial landlord Joseph Sanchez containing the probability of future economic benefit to Plaintiffs in the form of fire insurance proceeds. (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 1005).

CU-24-00212 Petition of Areli Avigail Hernandez

The Petition is DENIED without prejudice. Petitioner failed to file proof of publication.

CU-24-00241 The People of The State of California vs. Wong

The hearings on both motions are continued to February 10, 2025 at 10:30 a.m. due to the late notice provided to the responding party, which was mailed to the respondent on December 27, 2024. Penal Code 851.91 requires notice of at least 15 days. Since, service by mail is complete 5 days after the papers are mailed, needed to mail the moving papers on December 24, 2024.

CU-24-00245 Petition of Richard D'Andrade

The Petition is APPROVED as requested.

PR-18-00065 In Re the Estate of Mark Allen Jahn

The Petition for Approval of Final Distribution is APPROVED as requested.

PR-24-00038 Estate of Candy Johnson Hoagland

The Petition for Final Distribution and for Allowance of Compensation is APPROVED as requested.

PR-24-00123 Estate of Dean A. Smith

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on July 14, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

END OF TENTATIVE DECISIONS